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INTERNAL REVENUE SERVICE ADVISORY COUNCIL

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GENERAL REPORT
OF THE
INTERNAL REVENUE SERVICE ADVISORY COUNCIL

The Internal Revenue Service Advisory Council (IRSAC), the successor to the Commissioner's Advisory Group established in 1953, serves as an advisory body to the Commissioner of Internal Revenue (Commissioner). The purpose of the IRSAC is to provide an organized public forum for the Internal Revenue Service (IRS) officials and representatives of the public to discuss relevant tax administration issues. The IRSAC reviews existing tax policy and recommends policies regarding both existing and emerging tax administration issues. In addition, the IRSAC suggests operational improvements, conveys the public's perception of professional standards and best practices for tax professionals and IRS activities, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner and senior IRS executives on substantive tax administration issues.

The 2021 IRSAC is composed of 34 members who represent a broad cross-section of the taxpaying public and offer a wealth of experience in the areas of tax preparation for individuals, small businesses, and large, multi-national corporations; information reporting; tax exempt and government entities; volunteer community tax programs; electronic tax administration and digital services; and professional standards for tax professionals. Each member has a unique tax administration perspective and is committed to providing actionable and informed recommendations to the IRS.

The IRSAC is organized into five subgroups: Wage & Investment (W&I); Small Business/Self Employed (SB/SE); Large Business & International (LB&I); Tax Exempt/Government Entities (TE/GE); and Information Reporting. The Information Reporting Program Advisory Committee (IRPAC) and Advisory Committee on Tax Exempt and Government Entities (ACT) were consolidated into the IRSAC in 2019. For much of the same reasons that the TE/GE subgroup was established in 2019, the Information Reporting subgroup was established

this year to ensure that members have an effective forum to raise and discuss information reporting and payroll issues and recommendations.

Through four two-day working sessions, three public meetings, and numerous ad-hoc calls throughout the year, the IRSAC worked virtually with the IRS to orient IRSAC members with IRS and IRSAC operations, facilitate issue selection for our annual report from member- and IRS-raised topics, provide real-time feedback to the IRS, and craft actionable and informed recommendations for the Commissioner. Notable accomplishments for the IRSAC throughout the year include:

1. A letter of support to the Commissioner regarding the IRS Fiscal Year 2022 budget request for base appropriations of $13.2 billion, a program integrity allocation adjustment of $417 million, and the authorization of a working capital fund for the IRS's centralized services;
2. Real-time feedback regarding redesign of the Automated Underreporter Program Computer Programming (CP) 2000 Notice;
3. Real-time feedback led by the SB/SE subgroup regarding Form 944, *Employer's Annual Federal Tax Return*, and the potential benefits and drawbacks of eliminating the form or consolidating with Form 941, *Employer's Quarterly Federal Tax Return*; and
4. Real-time feedback on the draft revisions to the Forms W-8.

This IRSAC report reflects several key themes. First and foremost, the detrimental effects of sustained budget reductions over the last decade and the subsequent human capital attrition is a root problem that relates to issues presented in several report topics. Various problems presented by inadequate funding were consolidated into the first general report issue, Adequate Funding for the IRS.[1] Second, the Taxpayer First Act of 2019 (TFA), which was meant to reimagine and enhance the way that the IRS serves taxpayers, enforces the tax laws in a fair and impartial manner, and trains employees to deliver a world-class customer experience, is a common theme underscoring the report both in terms

[1] *See infra* IRSAC General Report Issue One: Adequate Funding for the IRS.

of offering feedback on how best to implement its legislative mandates, and in assessing the IRS's ongoing efforts to meet the spirit of the TFA to put taxpayers first.[2] Third, the IRSAC offers feedback regarding prioritization of the IRS's multi-year Modernization Plan initiatives, which underpin the IRS's ability to empower IRS employees, enforce the tax code fairly, and serve taxpayers and their representatives in the twenty-first century. Lastly, our report reflects the impacts and heightened importance of taxpayer relief, digital tools, and virtual service delivery due to the worldwide Coronavirus (COVID-19) pandemic, which, even in 2021, continued to impact taxpayers' abilities to meet their tax obligations and the IRS's ability to serve taxpayers and process returns and correspondence.

The IRSAC recognizes the IRS Office of National Public Liaison (NPL) for its invaluable assistance, dedication, and support throughout the year, and the Business Operating Division (BOD) leaders and staff as well as the National Taxpayer Advocate for their engagement and support. The IRSAC recognizes the ongoing support from the Commissioner, a former IRSAC Chair, and applauds the IRS workforce for its continued dedication to serving America's taxpayers by disbursing billions of dollars in economic relief payments, administering advance payments of refundable credits, and delivering targeted relief for business and entity taxpayers.

[2] Pub. L. 116-25, 133 Stat. 981 (2019).

2020 Report Recommendations Progress

As a follow up to the IRSAC's 2020 report, we are pleased to report that as of August 2021, the IRS had implemented, partially or fully, the following actions in accordance with the IRSAC's recommendations:

- Posted a new webpage on irs.gov for various dispute prevention and resolution alternatives for large business and international taxpayers: https://www.irs.gov/businesses/dispute-resolution.
- Expanded Customer Callback to the individual and business Practitioner Priority Service toll-free applications.
- Conducted focus groups and hosted exhibition hall booths at the IRS Nationwide Tax Forums to gather feedback and leverage the expertise of tax professionals on a number of issues including: addressing the needs of Limited English Proficient small business taxpayers; improving the Offer in Compromise (OIC) experience; gig economy worker tax compliance; and multilingual resources.
- Solicited pre-decisional feedback from key stakeholders through a variety of forums including: a National Multilingual Stakeholder Engagement Summit; a Virtual Currency Summit; a Research Credit Roundtable; a Refundable Credits Summit; transcript redaction working sessions; multiple Taxpayer First Act listening sessions; electronic signature focus groups; monthly practitioner meetings; and Nationwide Tax Forums Focus Groups.
- Launched an Identity Theft Central webpage (https://www.irs.gov/identity-theft-central) for victims whose stolen identity is used to establish business accounts and launched a Form 14039-B, *Business Identity Theft Affidavit*, for businesses to report that they are a victim of identity theft.
- Sought periodic and ongoing feedback from external Native American nation organizations.
- Included a link to Publication 5424, *Income Tax Guide for Native American Individuals and Sole Proprietors*, on the www.irs.gov/tribes landing page.

- Initiated the process of redesigning reminder notices in Taxpayer Digital Communications – Outbound Notices (recently renamed Digital Notices & Letters).
- Re-evaluated the concept of administrative burden for purposes of calculating taxpayer burden.
- Included links, where feasible, within forms, instructions, and publications to other relevant guidance.
- Shared information regarding business identity theft with tax professionals through the Security Summit and Nationwide Tax Forums and with businesses and tax professionals through an Identity Theft Central web page.
- Partnered with Payroll Industry members to establish a Payroll Industry Security Summit Team.
- Shared business identity theft information with other federal and state agencies through the Security Summit and Identity Theft Tax Refund Fraud Information Sharing & Analysis Center (ISAC).

ISSUE ONE: Adequate Funding for the IRS

Executive Summary

Adequate and consistent funding is critical to protecting the integrity of the tax system by balancing modern taxpayer services with appropriate enforcement of federal tax laws and regulations and for the IRS to successfully modernize its information technology systems.

The years of 2010 – 2020 were a time of reduced funding for the IRS, which adversely affected both taxpayer services and tax enforcement. At the same time, since the passage of the Taxpayer First Act of 2019 (TFA), Congress has continued to expand the IRS's role in the areas of refundable credits and targeted economic relief in response to the COVID-19 pandemic. Recent IRSAC, ETAAC and Taxpayer Advocate annual reports have all called for the IRS to receive higher and consistent funding and recognized the limitations of the current appropriations accounts structure[3] on IRS initiatives and operations.

Fortunately, Congress has recognized this situation and increased IRS appropriations during the past two budget cycles. Congress further recognized the importance of appropriate levels of service and enforcement when it enacted the TFA, with its theme of "Putting Taxpayers First" and its focus on an IRS customer service strategy.

Background

The IRSAC's Review

The IRSAC's 2020 Report provided a detailed review of IRS funding. This year, again, the IRSAC is bringing this issue to the forefront because of its importance.

In conducting its review this year, the IRSAC took several steps including: reviewing ongoing legislative changes to our tax laws and related IRS-tasking;

[3] Current appropriations accounts are: Taxpayer Services, Enforcement, Operations Support, and Business Systems Modernization (BSM). IRS's recent Report on the implementation of the Taxpayer First Act (TFA Report) proposed the creation of a working capital account, as well as changes to its taxpayer services and organizational structure.

reviewing Treasury Inspector General for Tax Administration (TIGTA) reports outlining IRS challenges and the conduct of the 2020 and 2021 filing seasons; reviewing IRS reports and other issuances relating to the TFA, IRS modernization, and the IRS Fiscal Year (FY) 2022 Budget Request;[4] and engaging with the IRS Chief Financial Officer's Office to understand the proposed working capital fund. This review resulted in several observations that serve as the foundation for the IRSAC's statement of unanimous support for IRS funding as outlined in the IRS FY 2022 Budget Request.

The IRS Plays a Critical Role in Enabling the Federal Government and Helping Taxpayers Comply With Their Tax Obligations

In FY 2020, the IRS collected $3.5 trillion in taxes (gross receipts before tax refunds) and generated 96 percent of the funding that supports the federal government's operations. In addition to collecting the taxes, one of the IRS's key responsibilities is to make it easier for taxpayers to understand and meet their tax obligations at a time of increasingly complex tax laws and regulations. These services require adequate staffing and proven modern technology, especially as taxpayer expectations rise based on their experiences in the private sector.

The IRS Faces Some Significant Challenges

Each year, TIGTA evaluates IRS programs, operations, and management functions to identify the most vulnerable areas in the nation's tax system.[5] For FY 2021, the IRS's top management and performance challenges focused, generally, on: the IRS's implementation of legislative mandates and tax law changes, including operational challenges relating to the COVID-19 pandemic; the need to improve security and address emerging threats to tax administration; and, finally, the need to provide a 21st Century taxpayer experience, which requires the modernization of IRS systems and operations.

[4] Pub. 4450, IRS Congressional Budget Justification & Annual Performance Report and Plan for FY 2022 (Rev. May 2021, "IRS FY 2022 Budget Request").
[5] For the latest evaluation, *see* TIGTA Memorandum Management and Performance Challenges Facing the Internal Revenue Service for Fiscal Year 2021 (Oct. 14, 2020).

The IRS's inability to meet these pressing challenges due to inadequate funding puts taxpayers, particularly individuals and small businesses, under tremendous pressure. Critical refunds may be delayed for needy families. Small businesses may not get their questions answered when phone lines are jammed. IRS processing may backlog. These types of events affect our economy and the well-being of our citizens.

Expectations for Our Tax System and the IRS Continue to Increase

Congress outlined heightened expectations for the IRS when it passed the TFA in 2019, including a reimagined taxpayer experience, enhanced employee training and a redesigned organizational structure to increase collaboration and innovation.

Moreover, since the passage of the TFA, Congress has continued to expand the scope of the IRS's role beyond tax assessment and collection to (i) include the delivery of expanded social benefits in the form of refundable credits (including the issuance of periodic payments), and (ii) leverage the IRS's capabilities to deliver targeted relief in response to national economic emergencies, such as the delivery of Economic Impact Payments and support for small businesses during the COVID-19 pandemic.

The combination of increased public expectations and expanding mission areas require that the IRS develop and operate a modern and flexible tax administration system staffed by adequate, qualified, and trained personnel.

The IRS FY 2022 Budget Request:
Base Appropriations, PIAA & Working Capital Account

The IRS needs adequate funding to deliver on the promise of the TFA to "put taxpayers first." The IRS also needs funding to meet its other pressing challenges—implementing Congressional directives, protecting taxpayer information and modernizing its technology to enable it to meet taxpayer expectations.

The IRS's FY 2022 base appropriations request is $13.2 billion, which is a ten percent increase over the FY 2021 operating level. The IRSAC believes this base appropriation will enable the IRS to perform its crucial mission to help taxpayers and effectively and efficiently collect tax revenue, which will also benefit the public.

In addition to its FY 2022 base appropriations request, the IRS is proposing a $417 million discretionary program integrity allocation adjustment (sometimes referred to as a Program Integrity Allocation Adjustment or PIAA) to fund investments to expand and improve the effectiveness and efficiency of the IRS's overall tax enforcement program. In effect, a PIAA is a revenue generating investment approved by Congress—the government invests money now to save or generate even more revenues in the future.

Finally, the IRS FY 2022 Budget Request includes appropriations language to establish an "IRS Centralized Services" working capital fund for IRS centralized services. This fund is modeled on the General Service Administration's Working Capital Fund. It would allow the IRS to achieve cost savings, promote economies of scale, establish more consistent processes and policies, and improve how it delivers facility services, technology, and other centralized services for its business units. By embedding support costs within the program budget activities, the proposal would also create visible incentives for the IRS business units to reduce support expenses and provide a mechanism for business units to self-fund critical projects that emerge after the budgets were set, subject to established standards.[6]

An Increase in the IRS's Appropriations is Reasonable

These funding levels, and the authorization of a working capital account, would enable the IRS to invest and deploy additional resources to improve taxpayer services and enhance revenue collection through improved

[6] For perspectives on the efficiency and flexibility of a working capital account structure, *see* United States General Accounting Office, Report for the Chairmen, Committee on Governmental Affairs, U.S. Senate, Working Capital Funds: Three Agency Perspectives (May 1994).

enforcement. The IRS estimates that it has an overall return on investment (ROI) of about five dollars for every one dollar invested, excluding significant deterrence effects.

The IRSAC believes that the IRS's FY 2022 Budget Request supports improved taxpayer service and fair and equitable tax administration for all Americans and supports these investments by Congress.

The IRS Also Needs Sustained, Consistent, Multi-Year Funding

In its past reports, the IRSAC has repeatedly supported providing the IRS with consistent, multi-year funding. The IRSAC continues to believe that it would be beneficial to taxpayers and overall tax administration if Congress provided consistent, multi-year funding to the IRS to build and improve taxpayer services and enforcement and to accelerate modernization in an amount determined to be appropriate through the legislative process. A few areas deserve special consideration for multi-year funding.

First, the IRS must move away from paper filings and communications—the vulnerabilities of our tax system to paper filings have been highlighted by the pandemic.[7] The cause of future system disruptions may differ, but disruptions will occur. For that reason, particular focus should be paid to increasing the digital submission and exchange of documents (including the availability of electronic filing for all IRS returns and forms), as well as digital communications. IRS customer service and enforcement staff also need modern tools to do their jobs. IRS initiatives in these areas are typically deprioritized for funding when new unfunded legislative mandates are issued. Consistent multi-year funding in these areas would accelerate improvement of the taxpayer experience and promote efficient tax administration.

Second, the IRS needs adequate numbers of qualified and trained staff in a variety of areas. Taxpayers deserve to access and talk with IRS assistors who

[7] *See* IRS, A Closer Look: IRS making progress on key areas slowed by the pandemic, but more work remains (Sept. 14, 2021), https://www.irs.gov/pub/irs-utl/operationsstatus.pdf, and TIGTA Rep. No. 2021-40-038, Interim Results of the 2021 Filing Season (May 6, 2021) ("TIGTA Interim Report").

pick up their phones quickly, answer their tax questions and solve their problems without inordinate delays.[8] The IRS must be able to target highly qualified staff, and then hire and train them to work on complex enforcement actions, appeals and audits.[9] In addition to providing adequate training, the IRS must also support staff with the necessary equipment, tools and resources to do their jobs.[10] In the face of these demands, the National Taxpayer Advocate reports that one-third of the IRS's current workforce could potentially leave the IRS this year based on employees who are eligible to retire and the average number of employees who leave each year for work elsewhere.[11]

Sustained, multi-year funding would help address this imbalance by enabling the IRS to more effectively target, hire, train and support staff which, in turn, improves taxpayer service. Consistent funding would also ensure that the IRS can sufficiently staff operations, information technology, and customer service roles in the current fiscal year and provide assurance that funds will be available for those employees in the future as they become more experienced and more effective employees.

Finally, any incremental investments in IRS enforcement should be accompanied by adequate funding of associated taxpayer services and systems modernization. And, to build policy maker and public confidence, the IRS must demonstrate that its investments in modernization and staff are carefully targeted, effective, and delivering an acceptable "return" on taxpayer funds.

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[8] IRS must have adequate funding to fully staff, train, and empower their front-line assistors to timely resolve issues including IT tools to access and service taxpayer accounts in real time.

[9] For example, IRS needs qualified staff: to identify, investigate and pursue schemes promoting abusive tax positions; provide taxpayers with access to IRS Appeals staff that can timely resolve tax disputes; and support the focus areas of the Taxpayer Digital Communication Outbound Strategy (recently renamed as Digital Notices & Letters).

[10] TIGTA has pointed out the adverse impact of lack of functioning equipment (copiers) on serving taxpayers (*see* TIGTA Rep. No. 2021-40-038, Interim Results of the 2021 Filing Season). IRS staff also requires access to information tools such as online legal research resources to analyze tax issues. For example, TE/GE needs access to Lexis to access the treatise Federal Taxation of Municipal Bonds to efficiently perform its function.

[11] *See* National Taxpayer Advocate Blog: Stretched to Its Breaking Point, the IRS Needs Multiyear, Sustained Funding to Efficiently Administer the Tax Laws and Provide Quality Service for Taxpayers (Mar. 17, 2021), https://www.taxpayeradvocate.irs.gov/news/stretched-to-its-breaking-point-the-irs-needs-multiyear-sustained-funding-to-efficiently-administer-the-tax-laws-and-provide-quality-service-for-taxpayers/.

The IRS is at an Inflection Point

The nation's expectations for the IRS and duties imposed by Congress cannot be effectively and efficiently met without a significant investment in IRS staffing and training, and secure, flexible, and modern technology infrastructure. Fully funding the IRS's FY 2022 Budget Request is a first step in the right direction. The second step would be to provide the IRS with more consistent, multi-year funding to enable it to modernize and to enforce our tax laws.

In lieu of recommendations, the IRSAC offers a statement of unanimous support for IRS funding as outlined in the IRS FY 2022 Budget Request consisting of:

1. Base appropriations of $13.2 billion to provide funding for the nation's taxpayer services, enforcement, operations support and IT modernization programs,
2. A program integrity allocation adjustment of $417 million to improve the effectiveness and efficiency of the IRS's tax enforcement program in order to recover taxes owed to the federal government,
3. Authorization of a working capital fund for the IRS's centralized services, and
4. Consistent multi-year funding for long-term initiatives including the customer service strategy, training strategy, and business modernization plan.

ISSUE TWO: Implementation of the Taxpayer First Act Section 1302, Modernization of Internal Revenue Service Organizational Structure

Executive Summary

Section 1302 of the TFA[12] instructed the IRS to modernize its organizational structure to successfully implement the TFA, prioritize taxpayer services, minimize redundancies, combat cybersecurity, and address the reporting lines for the Criminal Investigational Division. Under the mandate to prioritize taxpayer services and minimize redundancies, the IRS has proposed to consolidate its organizational segmentation (LB&I, SB/SE, W&I & TE/GE).[13] For example, a new, aggregated Exam Office within the new Compliance Division would be responsible for all examination processes across all taxpayer segments but would maintain some degree of specialization to address unique taxpayer needs. The IRS cites in its report to Congress that the proposed consolidation aims to reduce duplicative activities related to strategic planning, issue identification, work plan development, case selection, performance monitoring, and research. Coupled with the proposed Training Strategy, the proposed structure would also assist with career path development for its employees.

The IRSAC commends and supports the IRS's work to improve the IRS's efficiency and the taxpayer experience. The IRSAC also appreciates the IRS focus on attracting, training, and retaining an experienced workforce by providing more opportunities to develop broader and varied skill sets. One mission of the IRSAC is to help communicate the pulse of the taxpayer community to the IRS regarding its initiatives. In that spirit, this report communicates several questions, comments, and concerns that exist in the taxpayer community about the proposed reorganization. We recognize that the reorganization is a work-in-process and that the taxpayer reaction will certainly evolve as the details of the proposed reorganization emerge. The IRSAC offers to the IRS the following

[12] Pub. L. 116-25, 133 Stat. 981 (2019).
[13] *See* Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

questions, comments, and concerns to inform its implementation as it concludes on the details of its reorganization plan.

Background

Balancing Operational Synergies and Customer Service

The reorganization proposed by the IRS under the mandate of the TFA is the first broad reorganization of the IRS since the changes made under the mandate of the 1998 IRS Restructuring and Reform Act (RRA 98).[14] The pre-RRA 98 structure was critiqued[15] for the lack of consistent taxpayer treatment across its decentralized regional offices and for the lack of integration of the exam, processing, and enforcement functions (stovepipe mentality) within the regions. During this restructuring, the IRS converted from its "regional/stovepipe" structure to the model we have today where the IRS conducts operations on a national basis and taxpayers are separated by segments that are defined by unique customer service needs. The IRSAC observes that there have been meaningful benefits associated with specialization as a result of RRA 98, such as experts coordinating resources to effectively and efficiently serve taxpayers.

The IRSAC recognizes that the proposed organizational changes should create benefits for the IRS and taxpayers. For example, today the LB&I and SB/SE operating divisions have redundant infrastructure for the review and processing of corporate tax returns. Pooling the LB&I and SB/SE resources that review corporate matters should provide the IRS a workforce that can be more effectively developed and deployed and should ensure the corporate taxpayer a more consistent and fairer exam regardless of its size. Further, projects and processes within the IRS should be easier to evaluate and prioritize when viewed through the lens of the entire individual or corporate taxpayer community. A more efficient and effective IRS should lead to better service to taxpayers.

The IRSAC notes that there is a balance between the cost of maintaining four independent customer service organizations within the exam function of the

[14] Pub. L. 105-206, 112 Stat. 685 (July 22, 1998).
[15] *See* Customer-izing the IRS by Comm'r Charles O. Rossotti, strategy+business (Apr. 1, 2001).

IRS and the benefits to the taxpayer of that dedicated IRS segment. The IRSAC appreciates the complexity of the undertaking and the thoughtfulness needed to balance those costs and benefits.

For example, the IRSAC believes that some SB/SE and most LB&I taxpayers are fundamentally different than the average W&I taxpayer due to their size, complexity, and materiality. Further, the IRSAC believes that examination techniques, government resources, and the IRS organization need to be tailored to this more complex segment. To illustrate, an IRS resource capable of examining a local hardware store may not have the necessary experience to audit a large multinational corporation with complex international and supply chain issues. Experience is vital for examiners that oversee complex audits as they seek to exercise judgment regarding the scope, timeline, and materiality of a taxpayer's positions.[16]

TE/GE also has specialized areas that require a similar focus. For example, the tax rules related to employee plans, tax-advantaged bonds, Indian tribal governments, and exempt organizations are all unique and complex. The IRS resources that interface with these issues require training and experience to provide consistent and appropriate support to taxpayers.

Further, the current business operating divisions maintain special programs that are tailored to the specialized needs of certain taxpayers. For example, the Compliance Assurance Process (CAP), the International CAP (ICAP), and tax-advantaged bonds (VCAP) programs are popular and efficient tools for the LB&I and TE/GE subgroups. Similarly, LB&I's practice networks have been a tremendously useful channel to disseminate specialized expertise more broadly within the LB&I exam structure.

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[16] We note that the LB&I subgroup section of the 2014 IRSAC report made recommendations regarding the importance of effective exam managers, then discussed in the context of engaging specialists in an exam. Many taxpayers still become frustrated today when an IRS specialist exerts outsized influence over a manager with respect to the scope, materiality, or timeline of an issue. Care will need to be undertaken that under the new proposed structure, managers do not inappropriately cede more judgments to specialists. Our comments in this report are, in part, influenced by the real "ownership" challenges that exist today and a perceived relaxation of the segmentation design that is better suited to control those challenges.

The legacy segmented organizational structure within the IRS, while perhaps less efficient, has fostered connectivity and education for IRS resources to the specialty concerns within his or her segment. It is important that under the new combined Exam Office, resources with necessary familiarity to specialty areas are maintained. We appreciate that the IRS recognizes the criticality of achieving the right balance of operational synergies and customer service as evidenced by Deputy Commissioner for Services and Enforcement, Sunita Lough's March 23, 2021 comments to the Tax Executives Institute (TEI) in which she said the agency would focus on the "low-hanging-fruit" of operational efficiencies.

Balancing Reorganization and Modernization

The IRSAC believes that the Integrated Business Modernization Plan will be a powerful catalyst to achieve much of the TFA mandate. Specifically, the Enterprise Case Management system, digitalization strategy,[17] and virtual customer service tools such as Taxpayer Digital Communications – Outbound Notifications[18] will help drive better customer service and will lessen the impact of redundancies. The taxpayer community and the IRSAC have observed that each of the Integrated Business Modernization Plan, Reorganization Redesign Strategy, Taxpayer Experience Strategy, and Training Strategy represent a very material organizational workstream that require significant effort, dedicated change management, and cultural alignment. It is important to ensure that the momentum of the Integrated Business Modernization Plan will be maintained despite the heavy challenges confronting the IRS as it moves to implement these other strategies.

[17] *See* CL-21-23, A Closer Look: Enhancing Systems and Processes to Better Serve Taxpayers (July 22, 2021), https://www.irs.gov/about-irs/enhancing-systems-and-processes-to-better-serve-taxpayers.

[18] *See infra* Wage & Investment Subgroup Report Issue Five: Improving the Taxpayer Experience with the Taxpayer Digital Communication – Outbound Notification (TDC-ON) Application (Recently Renamed as Digital Notices and Letters).

Recommendations

Balancing Operational Synergies and Customer Service

1. Continue to carefully balance the operational efficiencies and level of specialized customer service as the IRS evaluates the details of its reorganization.
2. Continue to listen and receive feedback from taxpayers throughout the TFA reorganization planning process to ensure that they have the taxpayer perspective of the proposed changes.
3. Consider maintaining a sub-structure or segmentation within the new Exam Office that mimics the taxpayer-specific expertise that the TE/GE, SB/SE, and LB&I organizations provide today.
4. Consider retaining the infrastructure (i.e., people, process, and funding) that supports special programs tailored to taxpayer's needs, e.g., the CAP, ICAP, and VCAP.

Balancing Reorganization and Modernization

5. Carefully consider the interdependencies between the modernization and reorganization workstreams to minimize the disruption to the modernization timeline.

ISSUE THREE: Independent Office of Appeals

Executive Summary

The IRS Independent Office of Appeals (Appeals) asked the IRSAC to provide a report and recommendations based on Section 1001 of the TFA, Establishment of Internal Revenue Service Independent Office of Appeals. Appeals is interested in whether it is fully meeting the spirit of the TFA in functioning as a forum for resolving federal tax controversies in an impartial manner and whether there are aspects of its policies, procedures, or operations that should be revisited to ensure that they reflect the intent and the goals of the TFA. Appeals also requests the IRSAC's views on whether taxpayers with a federal tax controversy have appropriate and adequate access to Appeals and awareness of that access.

Background

Section 1001 of the TFA added Section 7803(e) to the Internal Revenue Code of 1986, as amended (the Code), to codify the "Independent" Office of Appeals and, among other things, to prescribe the purposes and duties of the office. As provided in new Section 7803(e)(3) of the Code, the function of Appeals is to resolve federal tax controversies without litigation on a basis which—

- Is fair and impartial to both the government and the taxpayer,
- Promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws, and
- Enhances public confidence in the integrity and efficiency of the IRS.

Although this has been Appeals' mission for more than 80 years, it now has the force of law. Appeals has always taken very seriously its independence from the IRS compliance functions, including the prohibition on *ex parte* communications, and its need to ensure the perception of this independence and impartiality among taxpayers and representatives. Section 7803(e)(4) of the Code provides taxpayers a general right to appeal, and the legislative history to

the TFA advises that cases of a type that are referred to Appeals under the law prior to the TFA remain eligible for referral to Appeals following its enactment.

Modernization

Currently, Appeals is one of the business units in the IRS pilot testing the Taxpayer Digital Communication (TDC) internet portal. This allows taxpayers and representatives to communicate and exchange documents with Appeals electronically. The IRS plans to expand the TDC pilot to all Appeals technical employees in FY 2022.

They are also looking for full implementation of Enterprise Case Management (ECM) software throughout the IRS so that cases can seamlessly travel from Exam and Collections databases into the Appeals database, greatly speeding the time a taxpayer's case can move to Appeals. Appeals is working to implement ECM in FY 2022, including digitalization of cases prior to being transferred to Appeals. Increased use of paperless case files would allow Appeals to leverage internal resources more efficiently and to streamline movement of files between offices. This would also greatly expedite the process and speed up providing the case files to taxpayers who request them.

Human Capital and Training

Appeals has 1,400 employees, which is significantly less than the 2,100 it had in 2011. This may be affecting the "taxpayer experience," with Appeals Officers managing increased caseload inventories. This creates a risk that they are less able to devote the time necessary to each taxpayer’s case. Appeals intends to hire several hundred new employees this year from inside and outside the IRS. Since initiating the Appeals Judicial Approach & Culture (AJAC) project, Appeals’ policy has emphasized that Appeals Officers are not to investigate or develop cases but rather to handle cases on a quasi-judicial basis. The newly hired individuals will require training and education to effectively and efficiently resolve cases, per the Appeals mission. Such training will require experienced

employees to serve as on-the-job instructors, taking them away from core responsibilities for a portion of their time.

Following enactment of the TFA, Appeals held a series of “all employee” training sessions to focus on the independence aspect of the TFA and emphasize the importance of reviewing cases in an impartial manner. These concepts are being integrated into training for new hires as well. Appeals training routinely addresses and reinforces Appeals' independence and impartiality through "role play" exercises focused on conference and settlement practices. In addition, Appeals employees receive updates on legal developments and judicial decisions. These updates highlight the importance of Appeals' quasi-judicial approach to case resolution.

As part of their initial and ongoing training, Appeals could benefit from the knowledge and experience of tax practitioners from outside the IRS. An opportunity to hear what the other side of the table thinks would be invaluable. This can be done by lecture or panel discussion. The challenge is the method of choosing and vetting the practitioners.

Obtaining Case Files

Section 7803(e)(7) allows specified taxpayers with a scheduled Appeals conference to request access to the nonprivileged portions of the case file on record regarding the disputed issues. However, it excludes documents provided by the taxpayer to the IRS. There are occasions where the disputed issues may not be entirely clear. There are also times when taxpayers want to be sure that documents provided were received and considered. They may have a new representative who does not know what was previously provided. In these circumstances, they may make a request for more than what is set forth in the Code Section. They can request the entire file, subject to any applicable privilege, by making a FOIA request, but this may take more time and delay the conference.

Appeals has designed and installed a new process that includes a dedicated staff to remove the privileged portions of case files before delivery.

Multiple delivery options are available to meet taxpayers' needs (e.g., paper, fax, secure email, or password protected flash drive). This process generally requires access to the paper case file to scan it, as well as time to redact and deliver it. Given current IRS office access restrictions this task may take several weeks to complete after a request is received. Appeals is currently pursuing a specialized redaction software product to streamline and improve this process. A timetable could also be developed to give the taxpayer a realistic range of time as to when the file is expected to be produced, with monthly updates to the taxpayer.

Independence at Settlement Conferences

For many years, the Internal Revenue Manual (IRM) and the procedural regulations have permitted Appeals to invite Examination to attend settlement conferences at Appeals' discretion. While some taxpayers or representatives may have concerns about Examination personnel attending conferences, it has been Appeals' long-standing practice to allow the Appeals technical employee responsible for the case to invite Examination or Counsel if they believe doing so would aid or accelerate case resolution. In such instances, Examination attendance is typically limited to the non-settlement portion of the conference. Examination personnel only attend settlement negotiations if the taxpayer and Examination agree to mediation.

In May 2017, Appeals initiated a multi-year pilot test to automatically invite Examination personnel to attend the non-settlement discussion portion of appeals conferences for all cases assigned to certain Appeals Team Case Leaders (ATCLs). The pilot test was limited to the largest, most complex cases in Appeals. Such cases constitute less than one percent of Appeals' total caseload. The pilot concluded last fiscal year, and following a detailed review of stakeholder feedback about the pilot program, Appeals concluded that inviting Examination and Counsel to the initial discussion of complex cases can be beneficial to improve the ATCL's understanding of the dispute but is not necessary in every case. Consequently, Appeals will continue to operate under the longstanding policy that ATCL's have discretion, but are not required, to invite

Examination personnel to the non-settlement portion of the Appeals conference, with the taxpayer's views solicited in advance to inform the ATCL's discretion.[19]

Fast Track Settlement for TE/GE Taxpayers

The IRSAC applauds the IRS for making permanent the Fast Track settlement program for TE/GE taxpayers, pursuant to Announcement 2012-34, IRB 2012-36, a program designed to increase efficiency of the settlement process by utilizing appeals officials as mediators. The availability of the program was recently mentioned in Revenue Procedure 2021-10, which provides procedures for issuers of tax-advantaged bonds to request an appeal to the Independent Office of Appeals.

TE/GE encompasses areas that involve third parties typically impacted by the resolution of a case (e.g., tax-advantaged bonds have a bondholder who is impacted by resolution of a case by the bond issuer). Consequently, efficient and timely resolution of issues is vitally important. Utilization of the Fast Track settlement program can assist both the IRS and taxpayers in timely and efficiently resolving issues. Resolving matters utilizing an administrative appeal frequently takes many months that may be practically unavailable to TE/GE taxpayers concerned about delay and repercussions from third parties. Despite the availability of the Fast Track mediation program, it is not frequently utilized in certain areas of TE/GE, such as with respect to tax-advantaged bonds. More resources may facilitate more frequent usage of the program. Appeals should initiate discussion with TE/GE as to whether there is an opportunity to increase utilization of the Fast Track settlement program and what actions, changes, or resources would be required to do so.

Compliance Assurance Process (CAP) Installment Agreement Cases

The RRA 98 provided taxpayers the right to appeal the rejection of installment agreements (IA). These appeals are requested through the CAP. IRM

[19] Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps, IRS Independent Office of Appeals (Sept. 2021), https://www.irs.gov/pub/irs-utl/atcl_update.pdf.

Section 8.24.1.3 states that in CAP cases, Appeals should review the case for appropriateness of the action, proposed or taken, based on law, regulations, policy, and procedures (national and local), considering all of the relevant facts and circumstances. IRM Section 8.24.1.3.8(13) states that Appeals' CAP hearing decision is limited to sustaining Collection or otherwise directing Collection to take the appropriate corrective action.

During discussions this year, the IRSAC raised concerns that during CAP hearings, Appeals does not always make an independent decision based on the merits, and instead limits the scope of the appeal to legal and procedural issues without regard to specific facts and circumstances, and without considering other collection alternatives such as Currently Not Collectible status. In response, Appeals held CAP training for its staff on June 30, 2021 to reemphasize Appeals' role in CAP hearings and how, specifically for installment agreement issues, Appeals does consider if an alternative amount would be appropriate. If Appeals determines a different amount is warranted, Appeals will direct Collection to grant the installment agreement for that amount. Appeals also updated its CAP IRM provisions in September 2021 to clarify and emphasize Appeals' role in CAP Installment Agreement cases among other updates.

Protecting Taxpayers' Right to Appeal

Taxpayers with Collection and Exam issues can appeal decisions with which they disagree, and Appeals wants to ensure that they have full access to exercise their rights. There are certain instances where access may be denied by a different area of the IRS. This may require Appeals to reach out and work with these other functions. For example, when taxpayers receive CP2000 audits, their appeal rights are not clearly articulated on the notice, their opportunity to appeal is often not given, and their appeal protest is sometimes ignored. New procedures could allow for CP2000 audits to be easily forwarded to Appeals prior to a Notice of Deficiency. Another example is when taxpayers are involved in Office or Field audits. Their request for an appeal may be denied on the basis that all information and documentation has been considered and nothing

additional has been provided. These cases should be forwarded to Appeals prior to a Notice of Deficiency where there is a difference of opinion with regard to interpretation of facts or law.

In-Person and Virtual Appeals Conferences

Non-virtual face-to-face meetings allow a taxpayer or representative to convey or perceive important intangible factors in a case through interaction (e.g., body language, etc.). Appeals plans to resume in-person conferences after the COVID-19 pandemic has ended. They will also continue to offer virtual options as a means of holding conferences when that method is preferred by the taxpayer or practitioner. Prior to the pandemic, Appeals was testing a Campus In-Person Conferencing Initiative in which Campus Appeals Officers would host in-person conferences in the geographic locations where they physically work or in other IRS office locations within the commuting area, thereby leveraging additional staff to host in-person conferences. This is expected to continue post-pandemic. Of course, there will always be situations where a taxpayer seeks an in-person conference in a location where Appeals does not have employees or employees with the appropriate skill level for the taxpayer's case. Appeals works with these taxpayers to ensure they receive a full hearing.

Access to Tax Court

If the taxpayer and Appeals do not agree on a resolution in a Collection Due Process Hearing, Appeals will issue of Notice of Determination (NOD). This allows the taxpayer 30 days to file a Petition in the United States Tax Court. IRM Section 8.22.9.13 allows for amending or revising the NOD if it was clearly in error, the taxpayer has not petitioned Tax Court, and the correction can be made within the 30-day period. However, it does not give Appeals the ability to rescind the NOD when the Appeals Officer made a clear mistake, i.e., an abuse of discretion, and it is recognized within the 30 days. While clear Appeals errors are not by any means a common occurrence, it does happen in a small percentage of cases. This places a burden on taxpayers to file a petition in Tax Court. If they

are represented by a Certified Public Accountant (CPA) or Enrolled Agent (EA) who is not admitted to practice in the Tax Court and not familiar with the procedure, the case may be wrongfully returned to Collections. As a matter of policy, Settlement Officers are instructed to issue "last chance" letters if the taxpayer or representative has not responded or provided requested documents. This letter notifies these individuals that there is a deficiency in submitting requested documents or that there has been no response to the Settlement Officer's attempt to arrange a conference date. An update to the taxpayer every 60 days of the status and progress of their case would provide transparency and help to avoid misunderstandings and miscommunication.

Taxpayer Service

Once a case arrives in Appeals and is assigned to an Appeals Officer, the taxpayer or representative may contact the Appeals Officer to find out information about the case. If the taxpayer or representative has not heard from an Appeals Officer, they can call the Appeals customer service telephone line at 559-233-1267. This telephone line is available to receive messages 24 hours a day. Appeals Account Resolution Specialists (AARS) research the cases and respond to calls within 48 hours. The AARS team assists callers with examination and collection issues which pertain to open or closed Appeals cases as well as educates them on Appeals processes and procedures. Due to resource constraints, this extremely valuable service for taxpayers is limited to cases that have been received in Appeals. The AARS team is unable to return calls if Appeals has not received the case yet.

Establishing an Appeals customer service strategy will enhance transparency of case status that will result in more instances of resolution of issues on a faster basis. Representatives from customer service could return telephone calls between 9:00 AM and 5:00 PM taxpayer local time and, if the taxpayer or practitioner is unavailable, leave a message with a call back number or extension. A fax number could be provided for the taxpayer to make initial contact. Also, a website could be set up to allow taxpayers to ask, "Who is my

Appeals Officer?" To assist taxpayers with common questions, Appeals is currently pursuing an artificial intelligence chatbot for the Appeals' pages on irs.gov. Appeals expects to have the chatbot up and running some time in FY 2022. Future plans include a second phase in which the chatbot will refer the taxpayer to a live person if it is unable to help.

In light of the TFA establishing the Independent Office of Appeals, the IRSAC has been asked to provide recommendations to Appeals on 1) independence and 2) access.

Recommendations

1. Continue the current pilot testing leading to a full implementation of the Taxpayer Digital Communication internet portal allowing taxpayers and representatives to communicate and exchange documents with Appeals electronically instead of through the mail.
2. Fully implement Enterprise Case Management (ECM) software and paperless case files throughout Appeals and the IRS so that cases can seamlessly travel from Exam and Collections databases into the Appeals database, greatly speeding the time a taxpayer's case can move to Appeals.
3. Utilize various platforms to allow real time participation and feedback during the training of Appeals Officers by trusted, experienced practitioners from outside the IRS who are experienced in Appeals.
4. Allow taxpayers to request and receive all nonprivileged documents and information in their case file, including documents provided by the taxpayer to the IRS.
5. Ensure that IRS Counsel and Examination participation is limited during Appeals hearings to the non-settlement portion, with strict adherence to the settlement portion of a hearing being decided on the hazards of litigation.
6. Allow taxpayers to have a meaningful opportunity to respond to communications between Appeals and the Examination team while the communications are occurring rather than waiting until after engagement

between Appeals and Examination has ended, at which point negative inferences without informed clarifications may have tainted Appeals' impartiality.

7. Continue to offer training and review materials to Appeals Officers which spotlight the September 2021 updated IRM provisions pertaining to CAP procedures with extra attention given to installment agreement issues.
8. Assess all current avenues of access to Appeals and work with corresponding operating divisions to ensure correspondence and taxpayer-facing resources clearly articulate necessary actions that taxpayers must take to request or preserve their right to an appeal.
9. Establish policy, procedures, and guidance to allow for the rescinding of Notices of Determination and for remand requests in Tax Court cases when Appeals and the taxpayer agree that there is a clear abuse of discretion.
10. Implement an Appeals taxpayer service strategy that will
    a. Provide transparency to taxpayers and their authorized representatives regarding their Appeals case status, who their assigned case officer is, and the status of requested case files by leveraging self-help options or proactive communications, and
    b. Improve communication efficiency between Appeals and taxpayers or their authorized representatives by leveraging secure communications, digital mailboxes, and customer callback.

ISSUE FOUR: Reduction in Electronic Filing Threshold for Information Return Filers

Executive Summary

All business and employers, including small business and self-employed (SB/SE) filers, are required to issue and file information returns for certain types of income they pay in the ordinary course of their trade or business. Whether it's Form W-2, *Wage and Tax Statement*, for payroll, Forms 1095 for Affordable Care Act (ACA) coverage, or Forms 1099 for a variety of business payments, the obligation to report on information returns spans small and large business taxpayers alike.

TFA Section 2301, Reduction in Electronic Filing Threshold for Information Return Filers, reduced the threshold for required electronic filing of information returns in a step-down approach. The threshold for required filing of information returns electronically would be reduced from 250 to 100 for returns filed in 2021 and then to 10 for returns filed in 2022.[20] However, the IRS has not released final regulations and has delayed the change in requirements to filing years 2022 and 2023, respectively.

On July 23, 2021, the IRS issued Proposed Regulations to officially implement the provisions of TFA Section 2301 (Proposed Filing Regulations).[21] In addition to proposing to reduce the electronic filing threshold as described previously, the IRS also included a variety of other proposed changes, including a modification to the aggregation method by which a business determines whether it is required to file electronically. There would also be a new requirement for filers to file *corrected* returns using the same method they used to file the *original* version of the return. Also included in the Proposed Filing Regulations are changes to the information return penalties under Treasury Regulation Section 301.6721-1 to update the return filing threshold. However, the IRS did not offer any safe harbor from penalties for the initial transition period.

[20] Taxpayer First Act of 2019, § 2301 (codified as I.R.C. §§ 6011(e) and 6724(c)) (2019).
[21] Prop. Treas. Reg. § 301.6011-2, 86 Fed. Reg. 39910, 39914.

The IRSAC previously recommended that the IRS consider aligning the timing of the changes in the electronic filing thresholds with the early 2023 launch of the new Form 1099 portal described under Section 2102 of the TFA to provide for a smoother transition to the new electronic filing process.[22] Though the Proposed Filing Regulations delay the stepped-down reduction of the electronic filing threshold by one year, the regulatory changes, new electronic filing requirements, and initial threshold reduction to 100 returns may take effect prior to the launch of the new Form 1099 portal.

The IRSAC met with the W&I Submission Processing team who provided analysis of paper information return filers and estimates of impacted businesses for both the 2022 and 2023 electronic filing changes. Additionally, the IRS provided initial outreach strategies for discussion and collaborated with the IRSAC on a variety of details by which communications could be targeted to reach vast numbers of small business and self-employed filers.

The IRSAC requested an update on its 2020 recommendation to delay the implementation of Section 2301 until the new Form 1099 portal website is available in early 2023. W&I indicated that they intended to align the launch of the Form 1099 portal with the subsequent threshold reduction to 10 returns in Calendar Year 2023.

Background

To electronically file information returns including the Form 1099 series, businesses utilize the Filing Information Returns Electronically (FIRE) system. To create an account to file information returns electronically, applicants must authenticate through Secure Access and complete an Information Returns Application for a Transmitter Control Code (TCC) to obtain a TCC. The purpose of the TCC is to identify the transmitter of the data. A TCC must be requested no later than November 1 for users needing to file 2021 returns in early 2022. Further, the IRS implanted technical changes to the FIRE Secure Access and

[22] Pub. 5316, IRSAC 2020 Public Report, SB/SE Issue Three: Internet Platform for Form 1099 Filings, at 83-85.

TCC request processes which impacts all existing and new users of FIRE for the 2021 filing season.[23]

If a business cannot comply with the requirement to file some information returns electronically, it can submit Form 8508, *Request for Waiver from Filing Information Returns Electronically.* This request must be submitted at least 45 days prior to the date that the information returns are due to be electronically filed with the IRS. The IRS must physically review and approve or deny each Form 8508 request.[24]

The Proposed Filing Regulations would change the method by which a filer aggregates returns for purposes of determining whether it meets the electronic filing form threshold. Specifically, a filer may not treat each individual type of return separately for purposes of counting towards the threshold, and instead must collectively count information returns of all types issued in the calendar year towards the threshold. For example, if a business is required to file 75 Forms W-2, 25 Forms 1099-NEC, and 75 Forms 1095, it will need to electronically file each of those batches of information returns electronically for 2021 filing season, notwithstanding that only 25 Forms 1099-NEC are required to be filed. To exacerbate matters, the Forms W-2 would be electronically filed with the Social Security Administration (SSA), the Forms 1099-NEC would be electronically filed with FIRE, and the Forms 1095 would be electronically filed through the Affordable Care Act Information Returns System (AIRS). Previously, the filer could submit all of these information returns on paper to the SSA and the IRS.

The IRSAC is concerned with the burden that the Proposed Filing Regulations present for small business and self-employed filers for the 2021 filing season. By the time the final regulations are published, and filers receive communication about the changes, it may be too late to comply with the IRS administrative processes and to submit the data electronically. The FIRE System

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[23] Special edition of e-News for Small Business – Information for FIRE Users (July 27, 2021), https://content.govdelivery.com/accounts/USIRS/bulletins/2ea3a50?reqfrom=share.

[24] Filing Information Returns Electronically (FIRE), https://www.irs.gov/e-file-providers/filing-information-returns-electronically-fire.

does not provide fill-in forms for information returns. Transmitters must have software, an in-house programmer, or a third-party transmitter to put the file in the standard ASCII format. For filers that do have the ability to create electronic data files, the IRSAC is concerned with the tight timelines in which these filers will need to obtain secure access to FIRE, to apply for and receive TCCs and to complete test submissions of formatted data in time to file by the due date. Tax year 2021 Form 1099-NEC is required to be filed by January 31, 2022, and an extension of time to file may not be requested unless a catastrophic event (such as is described on Form 8809, *Application for Extension of Time to File Information Returns*) has occurred, and even in such cases it is not automatic.[25]

The IRS should consider including a safe harbor from imposition of a penalty in the final regulations. The proposed changes present significant burden for SB/SE filers, especially given the short timeline for businesses to comply with the tax year 2021 filing requirements. Specifically, the IRS should provide relief from penalties under Code Section 6721 for filers that fail to comply with the 100-form electronic filing threshold for tax year 2021 returns and for filers that fail to comply with the 10-form electronic filing threshold for tax year 2022. Safe harbor language should incentivize filers to attempt 'best-efforts' at meeting the new filing requirements to ensure that SB/SE filers that act in good faith do not need to be concerned that penalties will be imposed as a result of mistakes or failures during the transition period.

To quantify the population of impacted small businesses and self-employed individuals, the IRS analyzed the total volume of paper filers of Forms 1099 plus paper filers of both Forms 1099 and Forms W-2. While the IRS had not completed its analysis of Form 1099-NEC at the time of publishing this report, the data generally trended with overall Form 1099 filing data.

[25] Filing Information Returns Electronically (FIRE), https://www.irs.gov/e-file-providers/filing-information-returns-electronically-fire.

Table 1: Projected Payers and Returns Impacted by Threshold[26]

Categories of Payers	Projected Records to e-File	100 Threshold	10 Threshold
Projected Percent of Paper Returns to e-File	30,000,000	19%	81%
EIN/Payer Count	780,879	23K - 30K	629K - 751K
Projected Returns to e-File by Threshold Segment		5,700,000	24,300,000

Section 2102 of the TFA requires the IRS to create an electronic filing portal for Forms 1099 that is substantially similar to the Social Security Administration (SSA) Business Services Online (BSO) system for filing electronic Forms W-2. The new Form 1099 filing portal is required to be ready for filers to submit Forms 1099 for the 2022 tax year (in early 2023). The 2020 IRSAC Report included a recommendation that the IRS delay Section 2301 implementation until after the new Form 1099 portal is available. Strategic and consistent communication is needed to ensure the vast number of small business and self-employed filers impacted by this electronic filing threshold change are aware of the changes in their obligations long before the filing season. Delaying the implementation would give the IRS time to publish the Final Regulations and strategically plan communications throughout 2022. The Form 1099 portal offers a free alternative to impacted filers who may not otherwise have the resources to hire a third-party provider or the technical resources to create electronic output files in the specified formats.

In order to communicate such a monumental change to the SB/SE filing industry, W&I requested assistance from the IRSAC with respect to the following:

- Identification of the most effective method(s) to reach the small business community filing 10 – 100 information returns,
- Identification of marketing/education opportunities for this population,

[26] 1099-MISC WISS Analysis (RAS).

- Development of a communication plan to explain the impact of TFA Provision 2301 and actions needed to comply.

Communication of the changes in the electronic filing requirements is imperative for both filers and the IRS. The IRS should consider leveraging a variety of channels to ensure that information reaches a broad range of small business filers. The IRSAC recommends that the IRS leverage both online and traditional mail for reaching small business and self-employed taxpayers including:

- *Targeted Communications to Business Taxpayers.* Leverage contact information the IRS has on file for impacted filers including email addresses, mailing addresses, and return preparers associated with the taxpayer to directly reach these paper filers.
- *Add prominent messaging on sites that Small Business owners frequent during the year.* Sites where withholding taxes are remitted such as Electronic Federal Tax Payment System (EFTPS) and sites where small business and self-employed filers are likely to visit prior to yearend including the Self-Employment Tax Page and Online Tax Calendar.
- *Align the timing of website communications to when taxpayers will most likely be visiting the IRS pages.* For example, consider quarterly communications on the EFTPS website when small business owners are filing and paying self-employment taxes.
- *Mail 'soft-notices' to impacted taxpayers.* For taxpayers where the IRS only has mailing addresses on file.
- *Leverage social media like Facebook, Twitter and LinkedIn*. Taxpayers with limited internet access often rely on mobile data for access to social media and for other internet purposes. A variety of business groups exist on these platforms for which targeted communications could be delivered.
- *Create a 'Go-To' reference for Filers that contains all their information return filing requirements in a single snapshot*. Current requirements for Forms W-2 versus Forms 1099 versus other information returns are

spread out or are buried in different publications. A single point of reference for all filing penalties would help filers quickly understand the different requirements.

In addition to online and targeted taxpayer communications, the IRS should also consider leveraging its vast government partner network to cascade communications about the changes including:

- Social Security Administration portal for free information return filing and Business Services Online sites
- Small Business Association Business Guide & IRS Business Taxes links
- Free information return filing through third-party vendors (i.e., IRS Free File for Form 1040)
- Information disseminated in payroll software such as QuickBooks

There are also a number of industry association groups that the IRS could leverage to distribute broad communications to a wide range of businesses including:

- American Payroll Association
- Direct Selling Association
- National Federation of Independent Business
- National Association of Enrolled Agents
- National Association of Computerized Tax Processors
- Council for Electronic Revenue Communication Advancement
- National Association of Tax Professionals
- Native American Financial Officers Association (NAFOA)
- National Congress of American Indians (NCAI)

Finally, the IRS attends select conferences throughout the year to broadcast important tax changes, including the IRS Nationwide Tax Forums. These conferences are attended by tax professionals all across the country and provide an ideal forum to communicate the change in requirements to professionals who can reach many small business and self-employed filers.

Recommendations

1. Include safe harbor language in the final regulations to provide penalty relief to filers who make good faith efforts to comply with the new requirements during the transition period for both the tax year 2021 and 2022 filing seasons.
2. Consider aligning the timing of the change in electronic filing thresholds from 250 to 100 with the launch of the new Form 1099 portal in early 2023.
3. Leverage IRS internet pages and social media, as well as government and industry partners who provide tax guidance to small business and self-employed taxpayers, to deliver targeted communications to reach impacted taxpayers.
4. Broadcast the change in requirements at annual conferences the IRS regularly attends to provide updates to industry, including the IRS Nationwide Tax Forums.

ISSUE FIVE: Circular 230 Revision

Executive Summary

Circular 230 contains the Treasury Department's "Regulations Governing Practice Before the Internal Revenue Service." It is the industry's standard of care for federal tax practitioners. The document provides detailed rules and guidance for numerous tax professionals including, but not limited to, lawyers, CPAs, EAs, enrolled actuaries, and enrolled retirement plan agents. The standards set forth in Circular 230 are relied upon by practitioners, the IRS, and the judiciary.

The IRS last updated Circular 230 in June 2014. The tax community continues to evolve and transform making the document outdated. The IRSAC has included this item in its 2016, 2017, 2018, and 2020 reports providing detailed recommendations to make the guidance current and more relevant. Currency is further highlighted by the American Families Plan introduced by the Administration on April 28, 2021,[27] to give the IRS authority to regulate paid tax preparers and the Taxpayer Protection and Preparer Proficiency Act,[28] containing numerous elements to provide preparer oversight.

The IRSAC reiterates the need for the IRS to be proactive in making Circular 230 current and relevant. Furthermore, we encourage the IRS to seek administrative avenues that will enable them to provide supplemental updates in the rapidly changing tax profession.

Background

The IRSAC engaged with the Office of Professional Responsibility (OPR) to follow up on prior years' recommendations to update Circular 230. The IRSAC previously addressed Circular 230 as a topic in each of our 2016, 2017, 2018 and 2020 reports making numerous recommendations, namely,

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[27] The White House, Fact Sheet: The American Families Plan (Apr. 28, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/.

[28] Taxpayer Protection and Preparer Proficiency Act, H.R. 4184, 117th Cong. (2021).

- Excise old law from Circular 230 and make other ministerial revisions, add appropriate references to the Annual Filing Season Program, and generally clean up the regulations for consistency and readability.
- In conjunction with the updating process, the IRS should investigate how to secure specific authority to update Circular 230 through Revenue Rulings or another administrative process. This would allow the IRS to more timely address changes and thereby preserve its credibility, reliability, and usefulness.
- Transition Circular 230 from a rules-based to a principles-based document. Expand OPR's long-running effort to reformulate Circular 230 towards a more principles-based rather than rules-based collection of practice standards, in line with other professional codes of conduct.
- Update terminology throughout the document so it is consistent, such as "tax advisor" to "practitioner" in Section 10.33.
- Modify Section 10.22(b) to include a provision indicating that a practitioner will be presumed to have exercised due diligence if the practitioner relies on the work product of a supervisor under certain circumstances.
- Modify Section 10.79 to clarify that OPR retains jurisdiction over practitioners who have been suspended or disbarred.

During the 2021 session the IRSAC engaged OPR to discuss current developments and collaborated on opportunities to revise Circular 230. We found OPR receptive and it acknowledged the need to update the document. The IRSAC reiterates the importance of making Circular 230 relevant guidance for the IRS and the practitioner community. Legislation has been introduced in the House of Representatives and the White House introduced The American Families Plan that both advocate for more practitioner oversight. The current legislative activity regarding regulation of the tax practitioner community further highlights the need to update Circular 230. Any increase in oversight further underscores the need for current, clear, and concise guidance.

Recommendations

1. Work with the Treasury Department to update Circular 230 for currency, relevancy, and readability.
2. Explore administrative avenues to more expeditiously provide supplemental updates of Circular 230.

ISSUE SIX: Postponing Deadlines Under Revenue Procedure 2018-58 With Regard to Information Return Filers

Executive Summary

The IRS requested that the IRSAC review and recommend modifications to Revenue Procedure 2018-58 (the Rev. Proc.). This revenue procedure provides a list of time-sensitive acts, the performance of which may be postponed under Code Sections 7508 and 7508A. Section 7508A provides that certain acts performed by taxpayers and the government may be postponed if the taxpayer is affected by a federally declared disaster or a terroristic or military action. After reviewing the Rev. Proc. and discussing with the IRS, the IRSAC recommends that the IRS expand the Rev. Proc. to include all information returns and to consider business filing deadlines for all information returns when providing relief under Section 7508A.

Background

Section 7508A permits a postponement of the time to perform specified acts for taxpayers affected by a federally declared disaster or a terroristic or military action. The Rev. Proc. provides a list of time-sensitive acts, the performance of which may be postponed under Section 7508 or 7508A. The 139-page Rev. Proc. does not, by itself, provide any postponements under Section 7508A. Instead, the IRS will generally publish a news release or issue other guidance providing relief with respect to a federally declared disaster, or a terroristic or military action.[29]

On March 13, 2020, in response to the COVID-19 pandemic, President Trump declared a nationwide emergency pursuant to Sec. 501(b) of the Stafford Act. On March 21, 2020, pursuant to Section 7508A, the IRS extended the federal income tax filing and payment deadlines for taxpayers from April 15, 2020 to July 15, 2020 through Notice 2020-18. The IRS also extended the deadline for taxpayers to contribute or recharacterize contribution amounts to IRAs until July

[29] *See* IRS, Tax Relief in Disaster Situations, https://www.irs.gov/newsroom/tax-relief-in-disaster-situations. The IRS issues most disaster relief by news release; however, in rare circumstances, the IRS may publish guidance in the Internal Revenue Bulletin.

15, 2020. However, deadlines for the more than 30 corresponding information returns were not extended, including Forms 1099, 1098, 1042-S, 1095, and 5498. Many of these information returns are due to be filed with the IRS by mid- to late-March, and with a 30-day extension, many businesses do not file the information returns until April 30. As a result of stay-at-home and social distancing orders, many businesses shut down in-person operations prior to filing the information returns and prior to the April 30 extended deadline. These shutdowns imposed operational and logistical constraints on the businesses that impeded their ability to timely file information returns; however, the IRS did not initially postpone filing deadlines for information returns.

Members of the IRSAC met with the IRS to discuss the Rev. Proc. and the IRS's Section 7508A relief response to the COVID-19 pandemic. The IRS noted that information return filing deadlines are generally not postponed because their delay would negatively impact taxpayers' ability to accurately and timely file their income taxes. The IRSAC noted that in some instances, postponing deadlines would not only be equitable for information return filers, but it would also improve information reporting accuracy and thus improve tax administration efficiency.

For example, IRA contributions and other plan details are reported annually on Form 5498, IRA Contributions Information, by the financial institution or custodian that maintains the plan details. Typically, this form is due to be issued to the taxpayer and filed with the IRS by May 31st annually. For 2019 transactions, the form was originally due to be issued and filed by June 1, 2020. The IRS did not initially postpone the June 1, 2020 filing deadline for Form 5498.

Since taxpayers were able, under the postponed deadlines, to contribute and recharacterize 2019 contributions to July 15 and those details directly impacted the information reported on the corresponding 2019 Form 5498, the June 1 due date meant that Forms 5498 would be issued with incorrect or incomplete information. After receiving feedback from external information return filers, the IRS postponed the time to issue and file Form 5498 to July 15, 2020 via Notice 2020-23.

However, since taxpayers could recharacterize contributions through the same date of July 15, the new extended due date to issue and file Form 5498 meant that businesses would be required to issue and file Forms 5498 up to the same day a taxpayer could change those reported amounts. Again, impacted external parties provided feedback and requested the standard 45-day time period between the deadline for recharacterizing contributions and deadline for issuing and filing the Form 5498. Ultimately, the IRS extended Form 5498 filing relief to August 31, 2020, through Notice 2020-35.

Notably, there are differences between nationwide emergencies and localized disasters that the IRS should consider when assessing the scope of relief. In a nationwide emergency where filing and payment deadlines are postponed for all taxpayers, providing similar relief to information return filers would be equitable. However, when assessing the scope of relief for a localized disaster, the IRS should account for the burden on information return filers caused by the disaster and whether those filers need information from taxpayers located in the disaster area or are themselves located in an affected county.

Recommendations

1. Expand Revenue Procedure 2018-58 to include all information returns that businesses may be required to furnish and file rather than limiting the relief to certain information returns.
2. Business filing deadlines for all information returns should be taken into consideration when the IRS is providing filing relief to taxpayers under Section 7508A(a).

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

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INTRODUCTION

The IRSAC Information Reporting (IR) subgroup is a diverse group of six members working collaboratively with representatives of the IRS addressing a broad range of issues related to information reporting and withholding impacting various industry sectors. The IR subgroup is grateful for the cooperation we received from members of the various business operation divisions within the IRS in producing this report. We are also very appreciative of the assistance given by Peggy Martin, IR Subgroup Liaison in the IR subgroup's inaugural year.

Our report addresses the following topics:

- Guidance from the IRS with respect to information reporting and withholding requirements for digital asset transactions,
- Updating Form 843 and Form 941-X processes to reduce the reconciliation burden on employers,
- Guidance regarding the Section 1446(f) regulations to ensure withholding is consistently applied by withholding agents, and
- Sourcing of negative rate payments.

ISSUE ONE: Payors of Income Related to Digital Assets Need Information Reporting & Withholding Guidance

Executive Summary

In September 2020, the Treasury Inspector General for Tax Administration (TIGTA) released the report *The Internal Revenue Service Can Improve Taxpayer Compliance for Virtual Currency Transactions* which included a recommendation that the IRS work to provide clarifying guidance as to the proper information reporting associated with digital asset transactions.[30] The IRS agreed with the recommendation and indicated it was working with the U.S. Department of the Treasury (Treasury) to modify requirements under Section 6045 of the Code for certain transactions involving digital assets.

The members of the IR Subgroup of the IRSAC requested a status update from the IRS related to these important changes, including the timeline in which the industry should expect the forthcoming Proposed Regulations, and insight into some of the key aspects. While the IRS confirmed that they are actively working with the Treasury to amend Section 6045 information reporting requirements to include digital asset transactions, they could not divulge the timing of the release of this important guidance nor the potential details that may or may not be addressed in the changes.

Exchanges and other hosted wallet providers require comprehensive guidance to successfully report Section 6045 tax information details related to digital asset transactions. Without clarity on key tax issues involving digital assets, the information gleaned from filers will not provide the transparency that the IRS needs to efficiently enforce tax compliance.

The IRSAC believes that the IRS should ensure that forthcoming guidance addresses fundamental issues related to trading or disposition of digital assets including:

1. Existing disparities in information reporting by exchanges and custodians,

[30] TIGTA Ref. No. 2020-30-066 (Sept. 24, 2020).

2. Distinguishing which types of digital asset transactions are subject to the Section 6045 information reporting requirements,
3. Providing clarifications about aspects of cost-basis reporting, and
4. Articulating reliable valuation methods of digital assets for information reporting purposes.

The digital asset ecosystem continues to evolve and with that there is a need for ongoing guidance from Treasury and the IRS as to how exchanges and custodians should report information for tax purposes. In addition to proceeds from the disposition of digital assets, exchanges and custodians offer a variety of other products that may give rise to taxable income but may not be subject to Section 6045 information reporting requirements. The IRSAC suggests that Treasury and the IRS contemplate a multi-year strategic plan to ensure clear and continuous forthcoming guidance is provided to the industry for other digital asset products including staking rewards, lending protocols, 'interest' paid on digital assets and more. Providing ongoing guidance for payers of digital asset income will result in the transparency needed for efficient and effective tax compliance.

Background

A virtual currency is a digital representation of value, other than a representation of the U.S. dollar or a foreign currency. As 'currencies' can generally only be issued by a sovereign, the IRSAC uses the term 'digital assets' throughout this report to encompass asset-backed tokens, stablecoins, utility tokens, and security tokens.

Digital assets have emerged as a popular asset class for investors. Since its inception in 2010, Bitcoin has produced significant gains (and losses) for investors, and the promise of big returns spurred the growth of thousands of variations of digital assets worldwide. It is estimated that the digital asset market

is valued at $2 trillion as of May 2021, a more than 1,000% increase over the end of 2020.[31]

The IRS first issued taxpayer guidance related to 'virtual currency' in Notice 2014-21 which was comprised of 16 Frequently Asked Questions (FAQs) spanning a variety of potential tax reportable transactions by individual and business income tax filers. The guidance did not address how exchanges and custodians should report on Forms 1099 for gains and losses related to sales of digital assets, although it did address some information reporting obligations for other digital asset transactions such as rewards earned from mining activities.[32]

In December 2016, the IRS served a John Doe summons on a leading industry exchange to provide identifying information and transaction data for its customer accounts that had either bought, sold, sent, or received at least the equivalent of $20,000 in any one transaction type (buy, sell, send, or receive) in any one year during the years 2013 to 2015.[33] This exchange also began issuing annual Forms 1099-K, *Payment Card and Third Party Network Transactions*, to its account holders when their gross account transactions met the reportable threshold of more than $20,000 paid over more than 200 transactions in 2017. Soon after, other exchanges and custodians followed and began issuing Forms 1099-K related to digital assets transactions. Alternatively, some exchanges began issuing Forms 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, while others continued to forgo reporting on Forms 1099 altogether.

In July 2019, the IRS issued thousands of education letters to taxpayers engaged in digital asset transactions. Letter 6173 required a response from the

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[31] Olga Kharif, Crypto Market Cap Surpasses $2T After Doubling This Year, Bloomberg, Apr. 5, 2021, https://www.bloomberg.com/news/articles/2021-04-05/crypto-market-cap-doubles-past-2-trillion-after-two-month-surge.

[32] Notice 2014-21, https://www.irs.gov/pub/irs-drop/n-14-21.pdf.

[33] Court Authorizes Service of John Doe Summons Seeking Identities of U.S. Taxpayers Who Have Used Virtual Currency (Nov 30, 2016), granting the IRS permission to serve a John Doe summons on Coinbase, https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used.

taxpayer and indicated that failure to do so may lead the IRS to initiate an audit.[34] Additionally, many taxpayers received Notice CP2000 indicating that the IRS had identified mismatches between information reported by third parties on information returns compared to the information the taxpayer had reported on their income tax return. Each notice proposed a balance due for unpaid income taxes plus penalties and interest. Following the issuance of these notices, in October 2019, the IRS issued its second round of digital asset taxpayer guidance in Revenue Ruling 2019-24, this time specific to rewards of new units of digital assets (i.e., airdrops) as a result of a hard fork. The IRS FAQs were also updated with additional scenarios and details. For the 2020 calendar year, some exchanges stopped reporting payments on Form 1099-K,[35] joining other large U.S. exchanges in not reporting income from digital asset transactions at all. In early 2021, the IRS issued John Doe summonses on two additional leading U.S. exchanges for information related to taxpayers that conducted digital asset transactions for the years 2016 to 2020 on their platforms.[36]

As a result of these ongoing disparities in current information reporting practices by exchanges and custodians related to digital asset transactions, taxpayers, practitioners, and the IRS are all experiencing a myriad of tax administration issues. To address these tax administration issues, and the expected issues associated with Form 1099-B reporting for digital assets, the

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[34] IR-2019-132, IRS has begun sending letters to virtual currency owners advising them to pay back taxes, file amended returns; part of agency's larger efforts (July 26, 2019), https://www.irs.gov/newsroom/irs-has-begun-sending-letters-to-virtual-currency-owners-advising-them-to-pay-back-taxes-file-amended-returns-part-of-agencys-larger-efforts.

[35] Coinbase stopped reporting Form 1099-K for 2020 tax year: Does Coinbase provide 1099-Ks? *As of the 2020 tax year, we will not be issuing Form 1099-K's for trades on Coinbase*, https://help.coinbase.com/en/coinbase/taxes-reports-and-financial-services/taxes/coinbase-tax-resource-center.

[36] Court Authorizes Service of John Doe Summons Seeking Identities of U.S. Taxpayers Who Have Used Cryptocurrency (May 5, 2021) (granting the IRS permission to serve a John Doe summons on Kraken), https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used-1, and Court Authorizes Service of John Doe Summons Seeking Identities of U.S. Taxpayers Who Have Used Cryptocurrency (Apr 1, 2021) (granting the IRS permission to serve a John Doe summons on Circle), https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used-0.

IRSAC and the IRS discussed specific information reporting issues that the regulations should address, including:

- **Provide clarifying guidance as to whether exchanges, brokers and other payors are required to submit Forms 1099-K or Forms 1099-B (or another information return) during the transition period before the new Section 6045 regulations become effective.** Given the negative impact to taxpayers because of incorrect or incomplete Form 1099-K or Form 1099-B reporting of digital asset transactions, and the operational challenges with preparing such reporting, the industry and taxpayers would benefit from clarification as to whether information reporting is required during the implementation period.
- **Ensure that guidance specifies which digital assets are in scope, including which digital assets are excluded from the reporting requirements, if any.** There are a variety of digital asset transactions that may not give rise to a gain or loss reportable event. To avoid applying incorrect tax treatment, the IRS could categorize the various use cases of different digital asset related activities for purposes of assigning information reporting requirements. Certain definitions and concepts are central to the application of Section 6045, and the IRS could consider breaking down the different assets to allow for the prescription of specific withholding and reporting guidance that applies to those assets and transactions to ensure the appropriate tax treatment is applied. For example, new utility tokens received through a token raising process are generally taxable upon receipt.[37] The forthcoming guidance should specify how or if these transactions should be reported on other information returns while also specifying how Section 6045 reporting should occur when the taxpayer later disposes of the rewarded utility token.
- **Ensure that guidance contemplates who is a "broker" for Section 6045 reporting purposes.** Like traditional financial services transactions,

[37] Rev. Rul. 2019-24.

there are a lot of actors involved in digital asset transactions including exchanges settling trades of digital assets, intermediaries providing marketplace platforms for buyers and sellers to facilitate trades of digital assets, and blockchain node operators that validate the creation of new units of digital assets to name just some. However, blockchain technology and processes used in digital asset trading or sales are not necessarily like those that we typically find in the traditional securities markets.

  - The IRSAC cautions the IRS about prescribing broad requirements to actors that may not have control, receipt or custody of the income that gives rise to withholding and Section 6045 reporting requirements.
    - For example, node operators of decentralized protocols do not have access to typical taxpayer information used to report information returns including name, address, taxpayer identification numbers, and other pertinent information necessary for matching the income to the income tax returns filed by the taxpayer.

- **Clarifications about source of income that gives rise to reportable transactions for Section 6041 reporting purposes.** Blockchain technology is not physically located anywhere. Exchanges and custodians operate platforms in locations all around the world. As new units of digital assets are distributed via an airdrop or hard fork, brokers need clarity as to when those new units are treated as being derived from U.S. sources, for purposes of withholding and information reporting.
- **Comprehensive details regarding basis reporting are necessary for the industry to begin implementing the changes in requirements.** Following are some key issues to consider:
  - When is a digital asset a Covered Security for basis reporting purposes? A security is ‘Covered’ if it is bought with cash. In the world of digital assets, there are a variety of transactions occurring without conversion to cash.

        - For example, rewards of new units of digital assets. According to Revenue Ruling 2019-24,[38] those transactions are taxed as ordinary income when the taxpayer receives (and has dominion and control of) the new units of cryptocurrency. When the taxpayer later sells the asset, should a broker treat that as a 'covered asset' for Section 6045 reporting?
    - Are wash sale rules applicable to digital asset transactions? The IRS and Treasury should provide guidance as to whether digital asset transactions are subject to the wash sale rules. If wash sale information is reportable on Form 1099-B, the IRS and Treasury should consider in practice how a broker might apply the requirements. For example, wash sales of securities are required to be reported only if the transactions take place in the same account and involve the same CUSIP (Committee on Uniform Securities Identification Procedures) number. Digital assets have no standard CUSIP numbers or central clearing agencies standardizing the transaction details for purposes of applying the wash sale rules.
        - As an example of the disparities, on one exchange, Bitcoin might be called BTC and on another it might be called GXBT. The lack of consistency presents significant challenges in applying the wash sale rules to digital asset transactions.
- What is a reliable application of fair market value (FMV) when determining the value of a digital asset for Section 6045 reporting? In their virtual currency FAQs, the IRS directs taxpayers to utilize prices listed on exchanges or with a published value to assist in establishing the FMV of assets for purposes of calculating basis.[39] However, there are thousands

[38] Rev. Rul. 2019-24.
[39] Frequently Asked Questions on Virtual Currency Transactions, Q28 (June 4, 2021): https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions.

of variations of assets traded daily and hundreds of exchanges with extreme price volatility across the same digital assets. Adding to the complexity, the digital asset market operates 24 hours a day, seven days a week which contributes to significant fluctuations in prices of digital assets in short periods of time, and with no clear "closing price" on any particular day. The IRS should include details in the regulations that address the following:

- How should a broker measure the trading period for purposes of information reporting? Is it acceptable to set a consistent trading period for purposes of tax?
- How should a broker determine the FMV of digital assets for purposes of reporting? Should the broker report the average value of the digital asset for the trading period? What are acceptable sources for determining the value at the time the asset was disposed of?

- Is a *de minimis* rule applicable to digital asset transactions for purposes of Section 6045 reporting? Current broker reporting requirements allow for a *de minimis* exception to reporting sales of fractional shares of securities. Digital assets are bought and sold in fractional shares so the volumes of information returns will be significant for businesses and the IRS. To ensure effective tax administration, the IRSAC recommends that the IRS consider a similar *de minimis* rule for purposes of information reporting of digital assets.

Income from the disposition of a digital asset is the tip of the iceberg in taxable digital asset transactions. The IRS should consider a broader strategic plan to evaluate the growing ecosystem of digital asset products giving rise to taxable income, including staking rewards, earnings from lending activities, and non-fungible tokens (NFTs).

The IRSAC also discussed with the IRS how it currently provides information withholding and reporting guidance to exchanges and custodians

transacting in digital assets. The IRS utilizes a variety of publications and online resource pages to communicate details to taxpayers about Form 1099 reporting but the limited guidance that has been provided for information reporting for digital assets is only available in Notice 2014-21 and the online Virtual Currency FAQs. As brokers and other businesses transacting in digital assets build processes to comply with the information reporting and withholding requirements, they will look to the valuable procedural details provided in those documents to ensure they implement a compliant program.

Recommendations

1. Expedite the release of the modifications under Section 6045 in order to minimize ongoing taxpayer issues with digital asset transactions. However, the new reporting requirements should include sufficient time for the industry to prepare for and implement the proposed changes, and should contemplate fundamental information reporting issues, including who is a broker, what digital assets are in scope for reporting, and how to account for details related to the transactions for purposes of basis reporting.
2. Develop a strategic plan for analyzing and providing the industry with applicable withholding and information reporting guidance for other digital asset related transactions including income from staking, lending activities and NFT marketplaces.
3. Update existing publications and Form 1099 Instructions with examples of digital asset transactions subject to the requirements. Leverage traditional communications like Internal Revenue Bulletins to articulate guidance for more specific application of details.

ISSUE TWO: Foreign Student and Scholar Social Security and Medicare Exemptions

Executive Summary

Nonresident Alien (NRA) students and scholars present in the U.S. under F-1, J-1, M-1, or Q-1 visas are eligible to work under certain conditions related to their presence in the U.S. These employees are also eligible for Social Security and Medicare tax exemptions for the first years in which they are present in the U.S., generally for the first 2 calendar years for non-students in J-1 or Q-1 status and for the first five calendar years for F-1, J-1, or M-1 students. The exemptions are typically worked out between the employee and employer while working for the organization if the employee provides the required documentation for exemption verification purposes. In some cases, the employee bypasses the employer, is withheld upon, and receives a refund directly from the IRS for these exemption eligible taxes. While the two separate methods of addressing these exemption eligible taxes result in the same outcome for the taxpayer, they cause discrepancies between the employer and IRS records. Establishing guidelines related to how the exemption is applied based upon the employee's employment status with the employer would help to eliminate some of these discrepancies and related issues.

Background

NRA Students present in the U.S. under F-1, J-1, and M-1 visas are eligible to work while completing their studies through an U.S. educational institution. Eligible work can be in the form of on- or off-campus work. Off-campus work is generally restricted to Optional Practical Training (OPT) or Curricular Practical Training (CPT), but may also be authorized by the United States Citizenship and Immigration Services (USCIS) in cases of severe economic hardship or work sponsored by an international organization. Documents must be provided to employers by the employee to establish

eligibility to work under the conditions related to the type of employment.[40] In general, off-campus work must be related to the field of study for which the employee is attending a U.S. educational institution.

Employees are eligible for an exemption of Social Security and Medicare taxes for work performed while present in the U.S. under F-1, J-1, and M-1 visas. The exemption is allowed under the guidelines of the NRA status so long as the employee has been present in the U.S. for less than five calendar years. If the employee is present in the U.S. for greater than five calendar years, she becomes Resident Alien (RA) and no longer eligible for this exemption (with limited exceptions).[41] Eligible employees must provide their employer with additional documentation to indicate the length of time they have been present in the U.S. for exemption validation purposes. This documentation is generally submitted with a copy of an authorized Form I-20, *Certificate of Eligibility for Nonimmigrant Student Status*, or related documentation to establish a validation for this exemption.

Employers use this information to exempt and not withhold social security and Medicare taxes from eligible employees when all documentation is provided during employment. While the visa and additional documentation establish eligibility for the employee to work for a U.S. employer, the additional documentation needed to establish time present in the U.S. for exemption eligibility is not required and cannot be compelled as a condition of employment. Therefore, employers may only exempt those employees that submit the required documentation on a voluntary basis. Employers are not allowed to provide this exemption without the documentation, and non-withholding without proper validation can lead to employer penalties, interest, and payment of non-withheld

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[40] USCIS, Foreign Academic Students (May 21, 2020), https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-section-1-employee-information-and-attestation/foreign-academic-students.

[41] Social Security/Medicare and Self-Employment Tax Liability of Foreign Students, Scholars, Teachers, Researchers, and Trainees (last updated Aug. 5, 2021), https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes.

taxes. It should be noted that employers are eligible for the same exemption on wages earned by the employee.

Employees do not always provide this required documentation to employers, and instead may reach out to the IRS directly to receive a refund of the exemption-eligible withheld taxes. The IRS responds in one of two ways based upon the documentation provided. First, the IRS may send notices to both the employee and employer advising of a received claim but stating that the employee should reach out to the employer to resolve. Second, the IRS may issue the refund directly to the employee if the employee provides all required documentation and Form 843, *Claim for Refund and Request for Abatement*.

The IRS received 8,916 and closed 14,781 foreign student exemption claims during FY 2018, but not all these claims included the submission of Form 843. The discrepancy in the number closed over received claims was due to carryover claims from prior years. The number of total claims has declined over the past three fiscal years. Some of this could be attributed to the COVID-19 pandemic.

Claims submitted to the IRS are often completed by employees that have left the employer's organization. Most exiting employees do not provide their employer with forwarding or new contact information upon leaving. This causes issues for employers attempting to resolve exemption matters directly with the employee. Unless notified by the employee, employers are unable to recognize a possible exemption-related issue until a notice is received from the IRS. Attempts to resolve these notices based upon IRS guidelines require employers to initiate contact with employee to obtain proper documentation. In most cases, these individuals are back in their country of origin before employers are aware of the exemption issue. This makes it difficult for employers to initiate the contact as the country-of-origin address and contact information is not provided by these employees at the time of hire. Requests for this type of information are ineligible to be a condition of employment and are generally not provided by the employee. Therefore, employers generally cannot resolve these matters unless the employee initiates the contact. This makes validating the residency requirements

for these employees virtually impossible without the employee initiating the contact. As a reminder, employers still must obtain information from the employee that supports the exemption claim, even with the presence of an IRS notice. This is because the IRS has not received any required documentation from the employee and thus puts the onus back on the employer to validate the exemption claim.

There are scenarios where the employee submits all supporting documentation along with Form 843 to the IRS to obtain a full refund of the tax withheld. In many of these cases, the employee is bypassing any prior notice from the IRS to work with the organization and submitting documentation to the IRS instead. Still others are submitting all documentation to the IRS before even attempting to contact the organization to resolve. In either case, these options are often the first action for the employee instead of reaching out to the organization.

There are great challenges and concerns for employers when the IRS refunds the employee directly. The IRS must adjust the employer's Form 941 records to reflect the refund. The IRS will adjust an employer's 4th quarter Form 941 information to reflect the full amount of taxable wages for the given tax year only. This is inconsistent with the taxpayer's pay records in that 1) not all wages are typically earned in a single quarter, and/or 2) no taxable wages may have been earned during the 4th quarter. The IRSAC confirmed this process with IRS representatives. The IRS does issue a notice to the employer and employee to indicate that the adjustment has been made. However, the notice provides no specific details on the affects to the employer's payroll information return records. The notices do not indicate the process used by the IRS to adjust the information return information.

This IRS practice can lead to additional issues for employers in attempting to reconcile and process amendments for the given quarters. It is a requirement that employers submit Forms 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and Forms W-2c, *Corrected Wage and Tax Statement*, to resolve these matters, even in cases where the IRS has manually

adjusted the employer records. Form 941-X requires both the previously reported and corrected amounts on each submission. The previously reported amounts on Form 941-X must match the exact amount the IRS currently has on file for the organization at the time the Form 941-X is processed. If discrepancies exist, the IRS will reject the Form 941-X submission and send notices advising employers to resubmit with the correct information. Employers are unaware of the IRS's manual adjustments until such time that they receive a notice of these changes. In the meantime, employers could have submitted multiple Forms 941-X that no longer match the previously reported amounts but do match their payroll records. The IRS is forced to reject these Forms 941-X because they do not match their records. This results in the utilization of employers' time and money to determine at what point the IRS made the adjustment, to correct their records, and to process updated Forms 941-X to submit to the IRS that match the previously reported records.

Adjusting payroll transactions and amending payroll-related information returns can be very costly to employers. This is especially the case for employers that use a third-party vendor to assist with payroll tax preparation and filing. A survey from 2018 (published in 2019) revealed that payroll tax preparation and filing is the number one outsourced payroll service with over 50 percent of U.S. employers stating they outsource these tasks.[42] The cost of amending these Forms 941 to resolve these issues can be greater than $1,000. This does not include other related costs including, but not limited to, Forms W-2c completion, adjusted payroll processing, refund check processing, and research labor hours. As previously mentioned, employers are eligible for the same refund as the taxpayer, but often find the cost of completing these corrections greater than any refund they may receive from the IRS.

Period of limitation issues also exist with these exemptions. The Form 941-X instructions indicate that employers have the later of three years from the

[42] 2018 Payroll Operations Survey, Deloitte, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/human-capital/us-2018-payroll-operations-survey.pdf.

date the Form 941 was filed or two years from the date the reported taxes were paid to file the Form 941-X. Additionally, Forms 941 are considered filed on April 15th of the succeeding year if the returns were filed prior to that date. For example, the period of limitations as it relates to amending of 2018 Forms 941 is April 15, 2022. Employers are still receiving notices related to foreign student exemption requests into 2021 for the 2018 tax year. This gives employers a very small window to attempt to connect with the employee to receive the required documentation and file the required amended information returns. Employers can be forced into refunding taxpayers for tax amounts that they may be unable to recapture.

Employers should continue to hold an active participant role in catching and processing these exemptions up front. Efforts by employers to obtain the required documentation upon establishing employment should be an integral part in combating this problem. However, this still requires cooperation from the employee to provide the documentation in a timely manner regardless of the employer's efforts to prevent an issue. The issue becomes extremely difficult to employers if calendar years are crossed and/or these employees leave the organization. The notices related to this matter indicate that employers should refund the employees if the tax was withheld in error. However, the taxes were not withheld in error based upon the information provided (or not provided) at that time of withholding. Employers are responsible to fix an issue that is of no fault of their own. Employers need assistance from the IRS to handle these issues with the least number of complications for all parties involved**.**

Additionally, employers need IRS assistance in combatting problems related to the automatic adjusting of payroll-related information returns. As previously mentioned, the IRS will adjust the 4th quarter returns only when a valid, substantiated exemption claim is provided by the employee. Both the IRS and employers would benefit from a system that allows for employers to provide the quarterly wage and tax detail changes related to these exemptions without submitting full Form 941-X returns. The addition of a grid on the notice sent to the employer from the IRS indicating that the records were adjusted would allow for

employers to respond and provide the accurate details of the wages and tax adjustments for each quarter of the tax year. Employers will then provide the actual wage and tax amounts for each quarter to reconcile against the total amount adjusted by the IRS in the fourth quarter only and remit this notice back to the IRS. The IRS would then be able to apply those specific changes to those quarters to match employer records without the use of a Form 941-X.

Recommendations

1. Eliminate the requirement for employers to refund and adjust information returns that would be impacted by NRA Student employee exemption requests for a given tax year once the Form W-2 has been issued by employers.
2. Require employees to submit all required exemption substantiation documentation and Form 843 to the IRS for a refund of taxes withheld, if the request for exemption review occurs after the issuance of Form W-2 for impacted tax year.
3. Create a grid on the current IRS notice requiring employers to provide quarterly wage and tax information related to the adjustment and refund issued to the employee by the IRS. This would be completed in lieu of a Form 941-X, if the employer chooses not to seek a refund of the employer portion of exempted wages.
4. Do not require but permit the option for employers to submit Forms 941-X if they are seeking a refund of the employer portion of the taxes withheld.

ISSUE THREE: Section 1446(f): Withholding on Transfers of Interests in Publicly Traded Partnerships

Executive Summary

Final Regulations published in November 2020 (the final 1446(f) regulations)[43] regarding broker withholding on transfers of interests in publicly traded partnerships (PTPs) are scheduled to go into effect with respect to transfers on or after January 1, 2023. It is crucial for withholding tax rules to be clear and administrable so that brokers have certainty with respect to withholding tax requirements. There are many items related to Section 1446(f) withholding that remain unclear and that present implementation challenges, and there is therefore a risk that brokers will withhold inconsistently and will under- or over-withhold on clients.

Background

Section 1446(f), which was added to the Code by the Tax Cuts and Jobs Act, Public Law 115-97 (2017) (TCJA), provides rules for withholding on the transfer of a partnership interest described in Section 864(c)(8). On November 30, 2020, the Treasury Department and the IRS published in the Federal Register final regulations under Section 1446(f) relating to the withholding of tax and information reporting. While the final 1446(f) regulations provide guidance with respect to many important issues, there are several cases with respect to which further written guidance is required in order to properly implement withholding tax under Section 1446(f).

Loans of PTP Interests

It is common for market participants to lend (and return) PTPs, to rehypothecate PTPs and to post PTPs as collateral for various transactions (PTP Loan Transactions). It is not clear, however, whether these PTP Loan Transactions are subject to withholding under Section 1446(f). The final 1446(f)

[43] Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, 85 Fed. Reg. 76910 (Nov. 30, 2020).

regulations require withholding on the "transfer of a PTP interest",[44] which includes "a sale, exchange, or other disposition"[45] of such an interest. While Section 1058 of the Code provides that gain or loss is not recognized on loans of securities that meet certain requirements, PTPs are not "securities" as defined by Section 1058, and it is therefore questionable whether Section 1058 is applicable to PTP Loan Transactions.[46] There are IRS and other authorities, however, that support the conclusion that Section 1058 was intended to be a safe harbor for nonrecognition treatment, and that loans are not considered dispositions that result in recognition events notwithstanding lack of technical compliance with the requirements of Section 1058.[47] Even if a PTP Loan Transaction were considered a disposition for purposes of Section 1446(f), it is still not clear whether Section 1446(f) withholding is required. The final 1446(f) regulations provide that a broker is required to withhold if it pays an "amount realized"[48] to a person subject to withholding, and that the amount of withholding is equal to 10% of that "amount realized".[49] Amount realized, in the case of a sale or disposition, is defined as "the amount of gross proceeds (as defined in Section 1.6045-1(d)(5)) paid or credited upon the transfer".[50] The cross reference to the Section 6045 regulations, which apply only to dispositions "for cash",[51] indicates that Section 1446(f) withholding was not intended to apply to PTP Loan Transactions where an interest is exchanged not for cash but for the right to receive back an identical PTP interest in the future. Any cash collateral posted by the borrower of the PTP interest should be treated as just that—collateral—and should not be viewed as gross proceeds or an amount realized on the PTP Loan Transaction.

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[44] Treas. Reg. § 1.1446(f)-4(a)(1).
[45] Treas. Reg. § 1.1446(f)-1(b)(8).
[46] This issue was discussed in the 2020 IRSAC Public Report, Pub. 5316 (Nov. 2020).
[47] For a discussion of this issue, *see* Report of the Tax Section of the New York State Bar Association on Certain Aspects of the Taxation of Securities Loans and the Operation of Section 1058 (June 9, 2011), *available at* https://nysba.org/NYSBA/Sections/Tax/Tax%20Section%20Reports/Tax%20Reports%202011/1239%20Report.pdf.
[48] Treas. Reg. §§ 1.1446(f)-4(a)(2)(i), (ii), and (iii).
[49] Treas. Reg. §§ 1.1446(f)-4(a)(1) and (c)(1).
[50] Treas. Reg. § 1.1446(f)-4(c)(2)(i).
[51] *See* Treas. Reg. § 1.6045-1(a)(9).

Imposing withholding tax on PTP Loan Transactions presents significant operational challenges for brokers given that withholding has never been required on loans of securities. In addition, it is not clear what policy objective is fulfilled by subjecting PTP Loan Transactions to withholding tax. The lender will ultimately receive back the PTP interest and would be subject to Section 1446(f) withholding tax when it disposes of the PTP interest at a later date. Finally, industry associations have noted that requiring withholding on PTP Loan Transactions could potentially create a disruption of the PTP loan and collateral markets.[52] Therefore, the IRS should publish guidance providing that PTP Loan Transactions are not subject to withholding under Section 1446(f).

Short Sales of PTP Interests

A literal reading if the final 1446(f) regulations indicates that a short sale of a PTP interest is subject to withholding under Section 1446(f). As described above, Section 1446(f) withholding applies to a transfer of a PTP interest, which includes a sale, exchange, or other disposition, if there is an amount realized. A short sale of a PTP interest likely constitutes a sale or disposition with an amount realized of cash. However, subjecting short sales to withholding under Section 1446(f) is not consistent with the policy underpinning Section 1446(f). Section 1446(f) was enacted by the TCJA in 2017 as a backstop withholding mechanism to help facilitate collection of tax under Section 864(c)(8), also enacted by TCJA. Section 864(c)(8) provides that certain gain from the sale of a partnership interest is treated as effectively connected with a U.S. trade or business (ECI) and therefore subject to tax. Section 1446(f)(a) provides that withholding is required "if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under Section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States". A short seller of a PTP

[52] *See* Securities Industry and Financial Markets Association (SIFMA) letter Re: Final Regulations Under Section 1446(f) (Feb. 24, 2021), https://www.sifma.org/wp-content/uploads/2021/02/SIFMA-1446f-Final-Regs-Letter_02.24.21.pdf, and SIFMA letter Re: Recommendations on implementation of Section 1446(f) (Aug. 2, 2018), https://www.sifma.org/wp-content/uploads/2018/08/Recommendations-on-implementation-of-section-1446f.pdf.

interest, however, was never a partner of the PTP, and therefore would never recognize ECI in connection with the PTP. As a result, no "portion of the gain (if any) on" a short sale "of an interest in a partnership would be treated under Section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States." Therefore, Section 1446(f) withholding should not apply to short sales of PTP interests, and the IRSAC's view is that the IRS should publish guidance providing that PTP Loan Transactions are not subject to withholding under Section 1446(f). Because, however, the language of the final 1446(f) regulations appears to be broad enough to include short sales, absent guidance to the contrary, withholding agents, who are jointly and severally liable for withholding tax, may have no choice but to withhold on such transactions, even if such withholding does not make sense from a policy perspective.

Cumulative Net Income

The final 1446(f) regulations provide that the amount realized subject to withholding on a distribution from a PTP is limited to the amount of the distribution that is attributable to amounts in excess of the cumulative net income (CNI) of the PTP.[53] The CNI of the PTP is the income earned by the PTP since its formation and that has not been previously distributed.[54] The PTP identifies the portion of the distribution that is attributable to an amount in excess of CNI on a qualified notice posted with respect to the distribution.[55] IRS officials have stated publicly at conferences and also in discussions with the IRSAC that if the PTP does not issue a qualified notice, or if a qualified notice issued by a PTP does not specify the amount of the distribution attributable to amounts in excess of CNI, a broker by default should assume that the amount in excess of CNI is zero, and therefore is not required to withhold under Section 1446(f). Although this interpretation may be supported by the language of the final 1446(f) regulations and the preamble to those regulations, it is not explicit in the final

[53] Treas. Reg. § 1.1446(f)-4(c)(2)(iii).
[54] *Id*.
[55] *Id*.

1446(f) regulations or any other published IRS guidance and is therefore arguably not clear. Because of the lack of explicit published guidance, a broker, who is jointly and severally liable for the withholding tax, may feel that it is necessary to withhold in a situation where the PTP has not issued a qualified notice, or where the PTP issued a qualified notice but has not explicitly stated that the distribution was not attributable to amounts that are in excess of CNI, notwithstanding the unofficial public statements by the IRS officials at conferences and to the IRSAC. It is not clear how brokers should act in this situation, and there is a risk of inconsistent withholding and of under- or over-withholding depending on the interpretation and risk tolerance of the broker. The IRS should therefore publish guidance providing that, consistent with public statements made by IRS officials at various conferences, (i) a distribution by a PTP is subject to withholding under Section 1446(f) only if, and to the extent that, the PTP publishes a qualified notice explicitly stating the portion of the distribution that is attributable to amounts in excess of CNI, and (ii) if the PTP does not publish a qualified notice, or if the PTP publishes a qualified notice that does not specify the amount of the distribution attributable to amounts in excess of CNI, then the distribution is not subject to Section 1446(f) withholding.

Retroactive Forms W-8 and Withholding Statements

Various provisions in the Treasury Regulations provide that a withholding agent may apply a Form W-8 (and accompanying withholding statement, which is considered an integral part of the Form W-8)[56] on a retroactive basis. Treasury Regulations issued under Sections 1441 (relating to nonresident alien withholding (NRA) tax) and 1471 (relating to FATCA withholding tax) of the Code provide that a Form W-8 furnished to a withholding agent after the date of a payment is considered effective as of the payment date if it is received (i) within 30 days after the date of payment, (ii) more than 30 days but less than one year after the date of a payment and it contains a signed affidavit stating that the

[56] Treas. Reg. §§ 1.1441-1(e)(3)(iv)(B), 1.1441-1(e)(5)(v)(A), and 1.1471-3(c)(3)(iii)(B)(1).

information and representations contained on the Form W-8 were accurate as of the time of payment, or (iii) more than one year after the date of payment and certain documentary evidence is provided in addition to the affidavit.[57] In addition, Treasury Regulations provide that a withholding agent may refund backup withholding imposed due to a lack of valid payee documentation if the payee subsequently furnishes, completes, or corrects the documentation prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.[58] Withholding agents apply these provisions in practice on a regular basis.

It is not clear, however, whether a Form W-8 (and accompanying withholding statement) may be applied retroactively with respect to Section 1446(f) withholding tax. The final 1446(f) regulations provide that "[a] certification … may not be relied upon if it is obtained earlier than 30 days before the transfer or any time after the transfer."[59] In addition, the final 1446(f) regulations provide relief for non-withholding in specific, narrowly tailored situations, such as where a withholding agent can establish to the satisfaction of the Commissioner that no gain on the transfer is treated as ECI,[60] but they do not explicitly provide such relief in the case of a retroactive withholding statement.

The ability of a withholding agent to apply a retroactive Form W-8 (and accompanying withholding statement)[61] will be particularly important with respect to Section 1446(f) withholding tax. The final 1446(f) regulations contain new payee statuses, such as dealers in securities that certify that gain from the transfer of a PTP interest is ECI,[62] and such transferees may be late in certifying to such new statuses given the novelty of the new rules. In addition, IRS officials have stated publicly at conferences that in order for a withholding agent to

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[57] Treas. Reg. §§ 1.1441-1(b)(7)(ii)(A) and 1.1471-3(c)(7)(ii).
[58] Treas. Reg. § 31.6413(a)-3(a)(1)(iv).
[59] Treas. Reg. § 1.1446(f)-1(c)(2)(i).
[60] Treas. Reg. § 1.1446(f)-5(b).
[61] Note that documents associated with Section 1446(f) certifications form an integral part of such certification. Treas. Reg. § 1.1446(f)-1(c)(2)(i).
[62] *See* Treas. Reg. § 1.1446(f)-4(b)(6).

reduce withholding tax based on the modified amount realized provisions,[63] a foreign partnership must allocate gain, not just income (as is currently provided), on a withholding statement. Because this is a new requirement, it is likely that many payee withholding statements will continue to allocate only income as per the current requirements and practice, and may not know to allocate gain for purposes of Section 1446(f) before the date of a Section 1446(f) related payment. Therefore, as a practical matter, withholding agents expect that in many cases payees will provide retroactive Forms W-8 and withholding statements as they are accustomed to doing under existing NRA, FATCA and backup withholding rues. The IRSAC is aware of no policy reason as to why retroactive Forms W-8 and accompanying withholding statements should be permitted for purposes of NRA, FATCA and backup withholding but not for purposes of Section 1446(f). It will also be confusing for taxpayers and will put withholding agents in difficult client relationship positions if retroactive Forms W-8 and withholding statements are permitted for purposes of certain sections of the Code but not others. Adding to the confusion is the fact that IRS officials stated publicly at a conference that a retroactive Form W-8 may be acceptable for purposes of Section 1446(f), but without any elaboration or commitment to that position. The IRS, in the IRSAC's view, should explicitly provide that the rules applicable to withholding agent reliance on retroactive Forms W-8 and accompanying withholding statements under Sections 1441 and 1471 apply in the same manner with respect to withholding tax under Section 1446(f) as well.

Recommendations

1. Publish guidance regarding the treatment of PTP Loan Transactions under Section 1446(f).
2. Publish guidance regarding the treatment of short sales of PTP interests under Section 1446(f).
3. Publish guidance regarding the applicability of Section 1446(f) withholding tax to a distribution by a PTP if the PTP does not publish a qualified

[63] *See* Treas. Reg. § 1.1446(f)-4(c)(2)(ii).

notice, or if the PTP publishes a qualified notice that does not specify the amount of the distribution attributable to amounts in excess of CNI.

4. Publish guidance regarding the rules applicable to withholding agent reliance on retroactive Forms W-8 and accompanying withholding statements under Section 1446(f).

ISSUE FOUR: Negative Rates

Executive Summary

Since 2014, interest rates in several countries have been negative. There is no guidance, however, as to the treatment of the payment of a negative rate under U.S. tax law. It is therefore not clear whether payment of a negative rate on a financial transaction is subject to U.S. withholding tax or how such a payment should be reported. Lack of guidance results in uncertainty for and inconsistent treatment by withholding agents. This issue was raised by the Information Reporting Program Advisory Committee (the IRPAC) in 2015,[64] and the IRSAC is reiterating the need for IRS guidance with respect to this issue.

Background

In June 2014, the European Central Bank (ECB) introduced a negative deposit facility interest rate,[65] and as recently as June 2021 the ECB confirmed that the deposit facility rate will continue to be negative.[66] Bank of Japan introduced negative interest rates in 2016,[67] and several other countries also have debt that trades with negative yields.[68] The Euro short term rate[69] and all of the Euribor rates were negative as of August 6, 2021.[70]

Negative rates significantly impact a number of routine cross-border financial transactions. The following examples were included in the 2015 IRPAC report referenced above.

- *Payment on Cash Deposits*. In a normal interest rate environment, a bank typically pays interest on deposit balances. In a negative rate

[64] Information Reporting Program Advisory Committee, International Reporting and Withholding Subgroup Report (October 2015), available at https://www.irs.gov/pub/irs-utl/2015IRPAC_Public_Report.pdf.
[65] *See* https://www.ecb.europa.eu/press/pr/date/2014/html/pr140605_3.en.html.
[66] *See* https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.mp210610~b4d5381df0.en.html.
[67] *See* https://www.cnbc.com/2016/01/28/bank-of-japan-adopts-negative-interest-rate-policy-reuters.html.
[68] *See* https://www.wsj.com/articles/portugal-joins-negative-rates-club-with-benchmark-bond-11607450825.
[69] https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html.
[70] https://www.euribor-rates.eu/en/current-euribor-rates/.

environment, the bank charges clients an amount to hold cash deposits based on the negative rate.

- *Collateral on Derivatives Transactions*. Cash is often pledged as collateral to secure derivatives transactions. The cash collateral accrues positive or negative interest (the rate of which is tied to the currency posted) that, if negative, could require the party posting the collateral to pay additional cash to the secured party.
- *Margin Loans*. A client borrows cash from a broker to purchase securities. In a normal interest rate environment, the client pays interest to the broker on the borrowed money, and the securities are used as collateral. In a negative rate environment, the broker/lender might be required to pay the client based on the negative rate.

There are other common financial transactions affected by negative rates. For example:

- *Sale and repurchase transaction (repo)*. A non-U.S. person (repo seller) sells U.S. Treasury or other securities to a U.S. counterparty (repo buyer) for cash. The repo buyer agrees to resell the securities at a later date to the repo seller at the original price plus an amount determined by reference to an interest rate. The incremental amount is termed "Price Differential." Repos are generally treated as secured loans for U.S. tax purposes.[71] Therefore, in a normal interest rate environment, the Price Differential is generally treated as interest when paid by the repo seller. In a negative rate environment, though, the Price Differential would be negative and there would be a negative rate payment from the repo buyer to the repo seller.

There is no authority as to the characterization and source of a negative rate payment for U.S. tax purposes. When no source rule is provided by statute

[71] *See, e.g.*, Rev. Rul. 74-27.

or regulations for an item of income, courts have sourced the item of income by analogy to categories of income the sources of which are specified by statute.[72]

A number of analogies would suggest that payment of a negative rate should be sourced to the residence of the recipient, and therefore not subject to U.S. withholding tax. For example, based on the substance of the transaction, payment of a negative rate may be characterized as a payment for the service of holding and safeguarding the payor's cash. Services income generally is sourced to the place where the services are performed,[73] which would be the location of the recipient, or payee, in the case of a negative rate payment. Another persuasive analogy is to a qualified fails charge, which has been described as a surrogate for a negative rate payment,[74] and which is also sourced to the residence of the recipient.[75] Other analogies that may be relevant and that would result in no withholding tax are to notional principal contract payments (generally sourced to the residence of the recipient),[76] bond premium (generally an offset to interest income),[77] and purchase price adjustments (generally sourced to the recipient/seller).[78] Consistent with the IRPAC recommendation in its 2015 report, the IRSAC's view is that a negative rate payment should be sourced to the residence of the recipient because (i) of the analogies described above, (ii) it would put U.S. and non-U.S. payors on an equal playing field, and (iii) it would avoid operational challenges for withholding agents.

An analogy to interest would result in a payment of a negative rate being sourced to the residence of the payor.[79] However, this analogy is weak and in the view of the IRSAC not correct as a negative rate payment is not a payment for the use of or the time value of money.

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[72] *See, e.g.*, Bank of America v. United States, 680 F.2d 142, 147 (Ct. Cl. 1982).
[73] *See* I.R.C. §§ 861(a)(3) and 862(a)(3).
[74] *See* SIFMA letter Re: Treatment of Negative Rate Payments for U.S. Tax Information Reporting and Withholding Purposes (July 9, 2020), *available at* https://www.sifma.org/wp-content/uploads/2020/07/SIFMA-Negative-Rate-Payment-Letter-with-Enclosures-07.09.20.pdf.
[75] Treas. Reg. § 1.863-10(a).
[76] Treas. Reg. § 1.863-7(b)(1).
[77] Treas. Reg. § 1.171-2(a)(1).
[78] *See* I.R.C. § 865(a).
[79] *See* I.R.C. §§ 861(a)(1) and 862(a)(1).

Recommendations

1. Publish guidance with respect to the source of a negative rate payment. Such guidance should be broad enough to cover payments on routine financial transactions such as deposits, collateral on derivatives, margin loans and repos.
2. If there are scenarios in which published guidance treats a negative rate payment as U.S. source fixed or determinable annual or periodical (FDAP) income, (i) such guidance should be effective only after an adequate transition period for withholding agents to modify systems to account for such guidance, and (ii) the IRS should not challenge taxpayers who have taken a reasonable position with respect to the tax characterization and source of a negative rate payment prior to the effective date of such guidance.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Large Business & International Subgroup Report

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INTRODUCTION

The LB&I subgroup appreciated the opportunity to work collaboratively with LB&I Commissioners Doug O'Donnell and Nikole Flax, Deputy Commissioner Holly Paz and the other BOD representatives. We are also particularly appreciative of the assistance of Stephanie Burch LB&I Subgroup Liaison.

Recommendations prepared by the LB&I subgroup include proposals to:

- Adjust the penalty assessment process when a taxpayer provides a reasonable cause statement,
- Preserve and adapt the penalty protections afforded by Revenue Procedure 94-69,
- Protect the personal identification information of responsible parties who request new EINs, and
- Improve the process to request and receive Certificates of Residency so that U.S. taxpayers fully receive the treaty benefits to which they are entitled.

ISSUE ONE: Consider Reasonable Cause Prior to Assessing Penalties on International Information Reporting Forms

Executive Summary

Despite best efforts at filing a correct return in all aspects, taxpayers required to file certain international information reporting forms, through no fault of their own, often are unable to obtain information on or before the filing deadline. Additionally, taxpayers may discover, after filing these forms, changes to information previously reported or additional information which necessitate filing an amended form. The IRS has automatically imposed penalties under the foregoing circumstances upon receipt of what appears to be a delinquent information reporting form.

The Internal Revenue Code provides reasonable cause standards for abatement of penalties. Taxpayers assessed penalties that meet certain reasonable cause standards are, nevertheless, required to seek abatement through a time consuming and burdensome process.

Background

Taxpayers filing late or incomplete international information reporting returns have been routinely assessed penalties before consideration is given to eligibility for abatement due to reasonable cause. In particular, penalties are being assessed with late or incomplete Forms 5471, *Information Return of U.S. Persons Wirth Respect to Certain Foreign Corporations*, Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. trade or Business*, Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*. Failure to file these forms does not result in underpayment of income or other tax liabilities.

Penalties under these circumstances can range from a minimum of $10,000 to several million dollars. Based upon Figure 1.8.1, Systemic Assessments of Code Sections 6038 and 6038A Penalties, included in the 2020

National Taxpayer Advocate Annual Report to Congress, 9,889 penalties were assessed in 2018 totaling $253,087,500. In addition, 5,468 abatements totaling $179,532,000 were ultimately granted. The abatement percentage by number equaled 55 percent, while the abatement percentage by dollar was 71 percent. The abatement percentages in 2016 were 67 percent and 88 percent respectively.

Through no fault of their own, taxpayers may be unable to obtain complete and accurate information to prepare these forms on or before the filing deadline. Reasons include foreign tax deadlines not coinciding with U.S. filing deadlines and final accounting information being unavailable until after the U.S. filing deadline. Some countries require that information be reported on a fiscal year beginning with the date of entity formation rather than a calendar or natural business year. Closely held foreign companies often choose to maintain their accounting records on the reporting period required for their country of residence's filing requirements. In those circumstances, information also may not be available until after the U.S. filing deadline. In other circumstances, U.S. persons may be the recipient of gifts or inheritance from foreign persons and have no indication from bank information that the distribution was from a foreign trust or that they have been named a beneficiary requiring additional information reporting. Often, foreign bank transactions and trusts are subject to secrecy laws limiting disclosure of information relevant to accurate information reporting by U.S. persons. Finally, it is not uncommon that a taxpayer sought the advice of a tax advisor and received erroneous advice. One example is the common misunderstanding that inherited amounts generally may not be taxable, yet still may be reportable if received from a foreign person.

Currently, the IRS does not consider the inability to obtain information because of foreign secrecy laws or incorrect tax advice to constitute reasonable cause for failure to file or incomplete foreign information returns. In some cases, taxpayers who submitted reasonable cause statements for abatement will discover that these reasons are not accepted until after filing information returns.

Seeking information that was not provided by a foreign source through other means can be an extremely burdensome and sometimes impossible task.

The IRSAC understands that the automatic assessment of penalties and not considering the foregoing two situations to be valid grounds for reasonable cause are in response to offshore tax evasion. However, taxpayers whose late or incomplete filings were not attributable to willfulness are forced to seek abatement through Appeals or Taxpayer Advocate Office assistance. Time to reach a final determination routinely exceeds one year and, in most cases necessitates engaging professional tax advisors to pursue relief from the penalties.

The uncertainty regarding the outcome and professional fee expense imposes a considerable burden on taxpayers. Furthermore, consideration of penalty abatement requests after initially assessing penalties adds further to the tremendous backlog to be addressed by IRS Examination, Appeals, and Taxpayer Advocate Office personnel.

The IRSAC understands that the penalties are systemically or semi-systemically assessed. Accordingly, consideration of reasonable cause statements included with returns may necessitate changes in procedure. However, the high percentage of abatement of penalties assessed under Sections 6038 and 6038A alone indicate a potential for reducing IRS workload while enhancing the taxpayer experience.

Typically, no two cases are alike and IRS personnel must consider the facts and circumstances on a case-by-case basis. Additionally, the process that penalty abatement relief can take may require multi-function engagement within the IRS compounding time and resources devoted to resolving the taxpayer's request.

The IRSAC understands that the IRS has historically been reluctant to allow reasonable cause requests to automatically stay a penalty assessment because this was perceived to require additional IRS resources. The IRSAC believes that taxpayers who file reasonable cause statements are sufficiently savvy and motivated such that the IRS will need to triage the vast majority of

penalty abatement requests at some point in the exam process. Accordingly, the IRS ought to be indifferent to considering the reasonable cause request before a penalty is automatically assessed.

Further, the IRSAC believes the current process negatively affects the taxpayer experience, increases IRS workload, and may discourage voluntary compliance. The Taxpayer Advocate specifically addressed Section 6038 and 6038A penalties and categorized this as "Most Serious Problem #8: International" in her 2020 National Taxpayer Advocate Report to Congress and this also has been the subject of a recent Tax Notes article.[80]

Recommendations

1. Consider the reasonable cause statement submitted by the taxpayer before penalties are automatically assessed and, provide taxpayers a ninety-day grace period with a temporary hold on collection activity to remedy information reporting deficiencies after initial filing.
2. In addition to the preceding, the IRS should consider developing a uniform reasonable cause statement and information template that provides taxpayers and their advisors with valuable guidance on how best to submit information useful for IRS review and consideration and avoid follow-up requests that delay resolution.

[80] *See* Marie Sapirie, *What's Reasonable for Late Filed foreign Information Returns?,* Tax Notes Federal (June 7, 2021), p.1533.

ISSUE TWO: Continuation of Rev. Proc. 94-69

Executive Summary

The IRS has proposed to eliminate the availability of using Rev. Proc. 94-69, which allows Large Corporate Compliance (LCC) taxpayers to avoid certain accuracy-related penalties under Section 6662(b) by providing the IRS with a written statement, showing the additional tax due or making a disclosure, within 15 days from the written information request from IRS personnel, rather than having to submit a Qualified Amended Return (QAR). Despite best efforts at filing a correct return in all aspects, LCC taxpayers often through no fault of their own later discover that changes are necessary to certain positions taken on a return.

Notifying the IRS of the changes by filing a QAR is tremendously burdensome, usually because filing an amended federal return in turn requires submitting numerous conforming state and local filings; this is often not a one-time incident, as multiple changes can be discovered over a period of time. The protections of Rev. Proc. 94-69 are vital as a burden reduction tool to be able to submit a single statement to the IRS for a global correction of outstanding items in reaching final resolution of the taxpayer's liability through examination.

Background

For nearly three decades, the IRS has offered an administrative process for a segment of large taxpayers under enhanced scrutiny to provide updated tax return information early on in the examination process. In a 2019 request for comments on Rev. Proc. 94-69, the IRS raised the possibility of making the procedures obsolete and provided several justifications for removal:

> *"[Rev. Proc. 94-69] is available to a small group of large corporate taxpayers, creates a disparity among the LB&I filing population, as well as the broader IRS filing population who must use the qualified amended return process. It also does not support the broader tax administration effort to improve the accuracy and reliability of returns at the time of filing,*

a factor that is important to the successful administration of the new LCC."[81]

The IRSAC believes the proffered reasons for obsolescence will fail to achieve both increased filing accuracy and sound tax administration. Combined with the extremely complex transactions and assumptions that underlie a multinational LCC taxpayer's income tax return, it is often challenging to present complete accuracy at the time of initial filing as changing facts, financial statement reporting, and governmental responses frequently lead to altered treatment and reporting of tax items on a return. In addition, examinations of prior tax years often lead to adjustments to a subsequent tax year after a return for that period has been filed.

The administrative process allowed by Rev. Proc. 94-69 enhances voluntary taxpayer compliance by encouraging fulsome identification to the taxpayer's best ability of all reporting changes before an IRS examination commences in earnest. This gives better visibility to IRS exam personnel, conserves resources, and provides a constructive basis for the taxpayer to help the IRS achieve resolution of any applicable adjustments to a taxable year. Thus, there seem to be few, if any, detriments to the continuation of Rev. Proc. 94-69.

Conversely, the necessity of filing amended returns on an ongoing basis—which is the IRS alternative if Rev. Proc. 94-69 is made obsolete—creates enormous burdens on an affected taxpayer. LCC taxpayer returns are not only extremely voluminous on a federal level, but the knock-on effect of having to make state-level amended filings in a significant number of jurisdictions each time the federal return changes causes a high demand on tax departments to continually update return filings. To give perspective, 44 states currently have an income tax, with some of these states having separate company or non-unity regimes. Given the high likelihood of a large taxpayer having presence in an extensive number of states and consequent reporting obligations, the compliance burden is significant each time a tax return has to be amended for both federal

[81] *See* www.irs.gov/newsroom/irs-seeks-comments-on-revenue-procedure-94-69.

and state purposes. In addition, the close of an IRS examination with adjustments would likewise require again both federal and state amended returns. Instead of a repetitive, costly, and burdensome amendment process at both the federal and state levels, the availability of Rev. Proc. 94-69 allows for a much more streamlined and efficient process for both taxpayers and the IRS.

The IRSAC notes the IRS intention to address this issue in the 2021–2022 Priority Guidance Plan.[82] As the information to be provided by a taxpayer under Rev. Proc. 94-69 should fairly inform the IRS of the specific bases for the taxpayer's changes to its original filed income tax return as a means to penalty protection, a properly structured disclosure process (such as through a model form) could help the IRS to better ascertain the taxpayer's claim and allow a good basis for dialogue between the taxpayer and examination team, while discouraging taxpayers from submitting vague claims. The IRSAC encourages LB&I to seek stakeholder input in the development of any new disclosure requirements if such a path is pursued.

The IRSAC also recognizes that the equities behind the Rev. Proc. 94-69 disclosure process—allowing a taxpayer to correct previously unknown inaccuracies arising from changed information post-filing on a penalty-protected basis—may be appropriate for similarly-situated taxpayers outside of the LCC compliance process. Drawing lines around a program encompassing a larger pool of taxpayers may be difficult but is worth consideration where appropriate. For example, the IRS could restrict the use of Rev Proc. 94-69 to those taxpayers that experience the most administrative burden of the amended filings, i.e., that have a certain number of dependent state and/or local tax filings.

Recommendations

1. Maintain Rev. Proc. 94-69, or an equivalent process, for large business taxpayers to inform the IRS of adjustments to an original filed income tax return while obtaining penalty protection.

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[82] *See* Tax Administration, No. 15 (Sept. 9, 2021), https://www.irs.gov/pub/irs-utl/2021-2022-pgp-initial.pdf.

2. Consider changing the scope of taxpayers that may use the protection of Rev. Proc. 94-69. Instead of defining the pool of taxpayers based on the LCC designation, consider using a more objective factor that reflects the taxpayer need for the procedure.
3. Consider a standard submission protocol to ensure that the protections of Rec. Proc. 94-69 are only available for disclosures of complete and specific adjustments to the original return.

ISSUE THREE: Protecting the Personal Identifiable Information of Responsible Parties

Executive Summary

Entities must complete IRS Form SS-4 application to be assigned an employer identification number (EIN). Line 7 of Form SS-4 requires an individual to be designated as a "responsible party" and provide personally identifiable information (PII), such as a social security number or other individual taxpayer identification number.

This requirement raises significant privacy concerns for those individual employees who must provide their PII on the application. The policy rationales for this requirement are to enhance the security of the application system and to provide a "beating heart" contact for the EIN applicant. The IRSAC understands these concerns and believes these objectives can be achieved without compromising the security of an individual employee's PII. Specifically, the IRSAC recommends that the IRS permit responsible parties to utilize a proxy number system in place of PII. This could be accomplished by modifying a current system (such as the Centralized Authorization File (CAF)) or creating a new proxy number for these purposes. For example, the CAF program could be modified to require applicants to provide their PII in order to use the CAF number as a proxy number on Form SS-4, Line 7.

Background

Employees often are required to obtain EINs on behalf of entities that their employer manages or for which they act in a fiduciary capacity. The application form for an entity to obtain an EIN (Form SS-4) since 2010 has required a "responsible party" to be identified by name and tax ID number and has stated that the responsible party is an "individual" rather than another entity. In 2019 the IRS announced a tightening of its processing procedure to reject any EIN application that does not identify an individual with a Social Security number (SSN) or individual taxpayer identification number (ITIN). The current procedure effectively requires PII of an individual employee to be provided to the IRS in

order to secure an EIN for the applicant entity. This information is required even in cases where the employer in its corporate capacity and not the individual employee has effective control of the assets and authority to act on behalf of the EIN-applicant.

An employer may apply for EINs for new entities frequently, often requiring an employee with knowledge of the entity to provide the employee's PII to be submitted each time. Specifically, this means the employee's PII passes through many hands such as the employer's tax department and legal counsel before being submitted to the IRS. This raises significant privacy concerns and negatively impacts the ability of financial institutions and other business organizations to establish legal entities in a timely manner. Employees' privacy concerns are not unfounded as tax return fraud and other identity crimes have increased significantly in recent years. Now more than ever, the IRS strongly cautions individuals to provide or share their social security numbers only for limited purposes. Employees are rightfully concerned that their PII is at risk of being compromised to the extent it must be used each time their employer establishes a new entity.

Recommendation

1. Identify an existing proxy identification number that a responsible party could use in lieu of PII. Alternatively, the IRS could create a new proxy tax identification number system for these purposes.

ISSUE FOUR: Ensuring the Timely Issuance of Certificate of Residency Forms

Executive Summary

Taxpayers are experiencing significant delays in receiving IRS Form 6166, *Certification of U.S. Tax Residency* (CoR or Form 6166). These delays are harming the ability of U.S. investors to obtain treaty benefits to which they are entitled. The COVID-19 pandemic has significantly exacerbated the problem because the process is entirely paper-based, making it hard for the IRS to process in the work-from-home environment. The U.S. Treasury bears the cost for foreign taxes that cannot be recovered to the extent that U.S. investors are entitled to foreign tax credits.

The IRSAC recommends accelerating the issuance of CoRs so taxpayers may receive them in a timely manner. This can best be accomplished by adopting electronic processing of Form 8802, the application for a CoR. In the immediate term, the IRS should allow taxpayers to file Form 8802 prior to December 1st and should process the applications upon receipt so that CoRs are issued as soon as possible after January 1st.

Background

Many U.S. treaty partners require investors to provide an IRS issued CoR demonstrating that the person claiming treaty benefits is a resident of the United States for federal tax purposes. The IRS requires that taxpayers complete Form 8802, the application for a CoR, and submit it no earlier than December 1st of the prior year for which it seeks certification. The IRS then processes the Forms 8802 and issues CoRs beginning January 1st that are valid until December 31st of the relevant year. The typical processing time ranges from 8-12 weeks, resulting in many taxpayers not receiving CoRs until March. There is no clear policy rationale as to why the IRS cannot begin processing these forms prior to January 1st so that they are able to be issued as soon as possible.

Receipt of valid Forms 6166 takes longer when the IRS makes clerical errors, such as misspelling a taxpayer's name on the Form, that require

correction before treaty relief can be claimed. These errors often arise from the manual processing of Forms 8802. The delays are exacerbated because there is no streamlined method for taxpayers to request a correction or check the status of Form 8802. The current phone number that taxpayers may use to inquire about status can take weeks to get someone on the phone to help.

The delay in receiving CoRs can cause a permanent loss of treaty benefits for income received prior to the date on which the CoR can be furnished to the withholding agent. This permanent loss arises in those countries that require valid CoRs to be furnished to the withholding agent before the payment date for an income event and do not allow for retroactive treaty relief through tax reclaims.

Even when claim for treaty relief can be made after an income event, the time period can be very short. In certain markets, for example, interest payments are received on January 15th, and CoRs must be provided to the local custodian by January 31st to apply a reduced treaty rate. This problem is more severe for taxpayers that do not receive a CoR before first-quarter dividends are paid, which typically occurs around March 15th.

This cost of lost treaty relief ultimately is borne by the U.S. Treasury to the extent U.S. investors claim foreign tax credits for the foreign tax withheld. For tax-exempt investors, including individuals owning U.S. retirement accounts investing through investment funds, the cost is borne directly through lower returns.

U.S. residents for purposes of a U.S. income tax treaty can request assistance from the U.S. competent authority if the actions of the United States, a treaty country, or both, cause or will cause double taxation or taxation otherwise inconsistent with the treaty. The Treaty Assistance and Interpretation Team ("TAIT"), which is under the LB&I Division, has primary responsibility for competent authority issues arising from U.S. tax treaties.

Recommendations

1. Permit electronic filing of Form 8802, *Application for United States Residency Certification*.

2. Accelerate the submission date of Form 8802 prior to December 1st and begin processing applications on a rolling basis once received, so they are ready to be issued as soon as possible after January 1st.
3. The IRS Competent Authority should continue to proactively engage and educate other foreign competent tax authorities, so they are aware of the IRS timeline and potential administrative delays for issuing CoRs, and advocate for grace periods for U.S. resident taxpayers to provide CoRs to claim treaty benefits.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Small Business/Self-Employed Subgroup Report

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INTRODUCTION

The 2021 IRSAC Small Business/Self-Employed (SB/SE) subgroup is a collaborative group of six members including CPAs, enrolled agents, attorneys, and academics. The collective tax experience of the members includes representation of individual and entity taxpayers from many segments of the taxpayer community in 1) tax return preparation, tax planning and advice, and 2) tax litigation and procedure at all levels of the IRS and in court. The SB/SE Business Operating Division (BOD) has approximately 23,000 employees and is responsible for a large and diverse population of taxpayers with a wide range of income and tax return complexity. The SB/SE subgroup members consider service on the IRSAC an honor and a privilege and are pleased to present this report. We thank now retired SB/SE Commissioner Eric Hylton, current SB/SE Co-Commissioners Darren Guillot and De Lon Harris, Chief Andrew J. Keyso of the Independent Office of Appeals and all the other IRS personnel we communicated with during the year for their cooperation and assistance. We especially thank our liaisons for their guidance and their facilitation of our advisory activities by providing information, advice and access to the appropriate IRS personnel.

The SB/SE BOD requested our assistance for the two issues discussed in this report:

- The impact of the SB/SE BOD's additional collection and examination efforts to address the challenges taxpayers were faced with as a result of COVID-19 and
- The compliance effort around abusive tax promotors and preparers.

ISSUE ONE: The IRS COVID-19 Response

Executive Summary

In response to the pandemic, in March 2020, the Collection and Exam functions of the IRS took action to protect the health of their employees and of taxpayers and practitioners by shutting down IRS Service Centers and implementing the "People First Initiative," which initially was planned to run through July 15, 2020. This thoughtful shift by the IRS to deal with the unforeseen and rapid onset of a world-wide pandemic, lasting much longer than originally projected, quickly served to limit face to face contacts, and promoted alternative means of communication (telephone, mail, and in some cases email). In addition, during this period, the IRS suspended existing installment agreement payments, allowed additional time for the processing of Offers in Compromise and document submission, and put a hold on lien and levy activity in most cases. New examination cases were not initiated unless a statute expiration became an issue. Many pandemic accommodations remain in place today.

The IRS sought the IRSAC's assistance to determine the effectiveness of these current efforts including SB/SE field employees' use of secure email to exchange information, WebEx, and the expanded number of forms that can be digitally signed. In addition, the IRS sought the IRSAC's assistance to identify and prioritize realistic solutions to ease the burden on taxpayers and businesses having difficulties meeting tax obligations while respecting the integrity of the compliance impact on our nation's tax administration system.

Background

At the onset of the pandemic and to provide a safe environment, the IRS sent its employees home and closed its mail centers. As of June 2020, the estimated backlog of unopened mail at IRS mail centers was 11 million pieces of mail, per Sunita Lough, then IRS Deputy Commissioner for Services and Enforcement. By the end of 2020, the IRS had 13 million returns to process and four million pieces of taxpayer correspondence to respond to, including 2019 tax returns.

In response to the unprecedented operational challenges faced by the IRS, the Collection and Exam functions of the IRS provided relief to U.S. taxpayers by implementing the "People First Initiative" in March 2020. Additionally, the IRS implemented and subsequently extended temporary deviations that maximized IRS employees' ability to execute critical duties in a remote working environment by allowing them to 1) accept images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of tax liability, 2) accept documents via email and 3) transmit documents to taxpayers using SecureZip or other established secured messaging systems.[83]

The IRS Collection and Examination functions sought the IRSAC's input on practical ways to assist taxpayers in this pandemic environment, such as outbound communications, access to self-help options, digital signatures, and forms. The IRS also requested input on the current streamlined installment agreement and lien thresholds, available through Automated Collection Service (ACS).

The IRSAC committee focused its research and response in the following areas:

A dedicated COVID-19 IRS web page. Would a dedicated COVID-19 IRS web page covering businesses be helpful to taxpayers adversely impacted by COVID-19? There are two groups impacted: those still in existence but in arrears; and businesses put out of business by COVID-19 closures. In each case, there would be "How to" narratives, FAQs, and links to all the forms necessary to respond to the IRS regarding tax arrearages.

Pandemic related changes to collection. What pandemic related changes to collection should be made permanent? Examples would include collection holds for extenuating circumstances, deferring refund offsets for low-income taxpayers, and increasing thresholds for liens and installment agreements.

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[83] Dept. of Treasury Memorandum Control No. NHQ-01-0320-0001 (March 27, 2020); Dept. of Treasury Memorandum Control No. NHQ-01-0620-0002 (June 12, 2020).

Send responsive documents through a secure messaging system. For correspondence examinations, has the IRS considered allowing taxpayers or their representatives to send responsive documents through a secure messaging system? What is the status of the expanding alternative communication pilot programs to additional correspondence and other exams?

Responses to the IRS for notices in error. With respect to notices issued in error, e.g., installment agreement default notices and notices sent to taxpayers saying their 2019 returns were not filed, when in fact they were filed, taxpayers need to be able to communicate with the IRS quickly. As of October 2020, 2.5 million returns were waiting for processing and unopened. Around the beginning of July 2020, the IRS had about 23.4 million pieces of unopened mail.[84] While the IRS has addressed the backlog of unopened mail at IRS Service Centers, much of the correspondence has not been processed which is causing incorrect notices to be sent. What are the current methods of communication available for taxpayers and are any other methods planned?

Alternative communications with taxpayers. What alternatives to call centers are being tested and researched to increase and improve communications with taxpayers?

A recurring theme in the subgroup discussions and recommendations in connection with the IRS's actions in response to the COVID-19 pandemic is that an increase in the ability to access and transmit information electronically is vital to improve taxpayer service and assist IRS employees in successfully resolving taxpayer accounts. Many actions taken by the IRS during this pandemic period to assist taxpayers were helpful and will be helpful going forward, even in a post-pandemic world, such as the temporary deviations for digital signatures and secure email correspondence.

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[84] Urban-Brookings Tax Policy Center webcast, The Prescription: Fiscal Policy for the COVID-19 Economy with Charles Rettig (Jan. 21, 2021), https://www.taxpolicycenter.org/event/prescription-fiscal-policy-covid-19-economy-charles-rettig.

To further improve the IRS's ability to perform collections and examinations in a pandemic environment, the IRSAC supports implementation or expansion of the following digital and virtual service tools:

1. Expanded Taxpayer Digital Communications (TDC),[85] specifically:
    a. Secure messaging for Examinations to allow the IRS and the taxpayer to share messages and supporting documents through a secure portal, reducing the need for phone calls and mailing documents, and decreasing the time to resolve accounts. This functionality was initially launched as an invitation-only pilot in December 2016 for Correspondence Exams. As of April 2021, it expanded to all five SB/SE Audit Campuses and encompasses most Correspondence Exam topics. For authorized representatives to participate, they must have an authorization on file and the taxpayer must first successfully sign up for TDC. To date, there have been over 190,000 invitations and 24,000 participants, few of which were tax professionals.
    b. Text Chat to offer real-time chat assistance to taxpayers and tax preparers proactively and reactively, particularly in the context of Collections. Currently, ACS Chat is used at all 19 call sites and since its launch in 2017, there have been nearly one million sessions addressing payments and Online Payment Agreements. Expansion of text chat for authorized third parties would be a welcome addition to address Collection issues described herein.
    c. Outbound Notifications to give taxpayers and their authorized representatives access to IRS collection notices through their Online Account (OLA).[86]

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[85] *See* CL-21-22, Accelerating Digital Communications to Solve Pandemic Challenges and Improve the Taxpayer Experience, De Lon Harris, Commissioner, Small Business/Self Employed Examination (July 16, 2021), https://www.irs.gov/about-irs/accelerating-digital-communications-to-solve-pandemic-challenges-and-improve-the-taxpayer-experience.

[86] *See infra* W&I Subgroup Report Issue Number Five: Improving the Taxpayer Experience with the Taxpayer Digital Communication – Outbound Notification (TDC-ON) Application (Recently Renamed as Digital Notices and Letters (DN&L)). For collection purposes, the following notices

2. Expanded use of the Documentation Upload Tool[87] so taxpayers and tax practitioners can efficiently submit Examination and Collection documentation to the IRS by uploading an image that is accessible to tax examiners in near real time.
3. Live virtual assistants, automated assistance through natural language voice bots (to address streamlined installment agreements and transcript requests), and chatbots.
4. Development and expansion of the use of Tax Pro Online Account, particularly to provide access to digital collection notices. Access for authorized third parties through the Tax Professional account would empower representatives to resolve Collection matters for taxpayers proactively before adverse collection activity is taken by providing full visibility to the chain of notices, which are not always on hand for taxpayers or their representatives.
5. Enhanced access to Collections and Examination correspondence and required actions for underserved communities, specifically through:
    a. Increased smart-phone friendly access to information for individuals without easy access to a laptop or desktop;
    b. Electronic access to account information in walk-in centers for individuals without access to a smartphone or desktop computer (like a kiosk); and
    c. Expanded electronic access to notices and information in multiple languages.

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that are already available in OLA would be of benefit for tax professionals: CP14, CP501, CP21A, CP60, CP14I, CP62, CP49, and CP39.

[87] *See* CL-21-25, Innovation at Work – Using Technology to Bring the IRS Forward, Nancy A. Sieger, IRS Chief Information Officer (Aug. 26, 2021), https://www.irs.gov/about-irs/innovation-at-work-using-technology-to-bring-the-irs-forward.

The IRSAC notes that adequate, sustained, and multi-year funding for these digital service improvements is critical to enabling the IRS to effectively perform Collection and Examination duties in a pandemic environment.[88]

The IRS has already provided volumes of information on its website in connection with COVID-19 relief. We believe there is sufficient guidance specific to employment tax relief, economic impact payments, child and dependent care credits, collection, and exam relief. Taxpayer specific questions or requests for additional relief may be handled on a case-by-case basis.

The IRS has requested comments on increasing the threshold for streamlined installment agreements (currently at $25,000; $50,000 if the taxpayer agrees to a direct debit or payroll deduction agreement) and Notice of Federal Tax Lien determinations. While it is understood that federal tax lien filings protect government interests, they are also extremely harmful to taxpayers, especially small businesses which rely on lines of credit and other forms of loans, to operate.

The IRS delayed the issuance of default notices on installment agreements until August 2021. Due to the current surge in COVID-19 cases and the ongoing effects on both business and personal finances, the subgroup feels that this delay should continue through at least December 2022. The residual financial constraints resulting from the pandemic have had a long-term impact on many taxpayers, which will likely last beyond 2022. The IRS took additional steps to automatically add certain new balances into existing agreements as part of the Taxpayer Relief Initiative. The IRS also sends a letter to taxpayers who miss an installment agreement payment to alert them before an installment agreement defaults; however, several IRSAC members noted that they typically do not receive these letters in time to avoid a defaulted agreement. A call from an IRS employee before defaulting an agreement, with opportunity to correct, would be helpful in resolving matters, and avoiding a return to ACS or the field to re-negotiate a collection alternative.

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[88] *See supra* General Report Issue One: Adequate Funding for the IRS.

To improve the ability for the IRS to communicate with taxpayers and efficiently address issues, it would be helpful for phone assistors, who may also at some point be "text chat," or "online" assistors, to be empowered with access and the ability to resolve tax account issues on the first contact. Additionally, the IRSAC believes that the IRS could alleviate the need for redundant calls to ACS or Practitioner Priority Service (PPS) to request temporary suspension of collection activity, i.e., account holds, if the duration of an account hold was extended beyond the current timeframe of six weeks. Currently, correspondence is processed by the IRS over a longer timeframe, roughly 11 weeks. Ideally, the account hold would remain in place at least as long as the timeframe that the IRS needs to process correspondence plus additional time to account for slower mail transportation, so that taxpayers' responses could be considered before resuming collection activity.

Additionally, when estimated income tax payments or quarterly employment tax payments are applied to the incorrect tax period or quarter due to a misunderstanding of how the deadlines relate to the tax periods or through clerical mistake, the only way to move the payment to the correct quarter is to engage the IRS, which is typically accomplished by contacting PPS. Empowering ACS and PPS assistors to resolve that issue on first communication and apply the payment to the appropriate time period would be a welcome improvement. For authorized representatives, the ability to communicate this request digitally to the IRS would offer flexibility for practitioners to address it when it is most convenient to them as well as peace of mind that the request was received. For IRS Collection efforts, this could offer a scalable workflow to distribute across a remote workforce.

The IRSAC also notes the challenges associated with contacting PPS to discuss a collection notice when the IRS assistor is unable to access the taxpayer's account or identify the reason that a notice was issued (e.g., an installment agreement default notice), or the taxpayer's response issued via mail correspondence has not been scanned and associated to the taxpayer's account. This results in the need to call back or escalate the case to a more senior

assistor. The IRSAC feels that high speed scanning solutions at all correspondence service centers would decrease the timeframe to associate taxpayer responses with their account, and we encourage the IRS to assess assistor permissions to ensure they have adequate access to research taxpayer accounts and facilitate efficient resolution.

The IRSAC communicated through various Zoom calls with members of SB/SE and W&I to discuss these issues and tools that may assist the IRS in resolving taxpayer accounts now, and post-pandemic. Discussions were held on the installment agreement and lien thresholds, and implementation of enhanced technology for improved communication. Recommendations were developed based on practitioner experience and feedback from the IRS.

Recommendations:

Enhanced Technology to Facilitate Examination and Collection Efforts in a Pandemic Environment

1. Implement high speed scanning solutions for SB/SE correspondence sites.
2. Expand secure digital communications and document upload between the IRS and taxpayers, particularly for Examination efforts.
3. Explore allowing and encouraging authorized representatives to engage in Taxpayer Digital Communication correspondence exams without requiring additional action on behalf of the taxpayer beyond executing the power of attorney.
4. Expand Tax Pro Online Account functionality to provide authorized representatives with access to digital notices, particularly for Collection notices.
5. Expand authenticated text chat for authorized third parties to resolve collection issues.
6. Continue to provide deviations for employees to accept digital signatures and secure email correspondence for Collections and Examination use until viable alternatives are deployed.

7. Improve intranet connectivity and expand bandwidth for remote connectivity of IRS employees.
8. Enhance access to Collections and Examination correspondence and required actions for underserved communities by optimizing online accounts and related information for mobile-devices and Limited English Proficiency taxpayers.

Installment Agreement Relief

9. Establish the threshold at $150,000 for a streamlined agreement, and make it available to all taxpayers, whether the account is assigned to a revenue officer or ACS.
10. Raise the lien filing threshold to $250,000 in most cases, particularly if an installment agreement is in place.
11. Continue to delay defaulting installment agreements through at least December 2022.

Empowering ACS and PPS Assistors to More Efficiently Resolve Taxpayer Account Issues

12. Increase time on collection holds to align with IRS correspondence processing timeframes.
13. Empower ACS and the PPS assistors to move taxpayer payments or deposits that were clearly made by clerical error for the wrong tax period.
14. Allow ACS and PPS greater access to taxpayer notices and account notes to provide clarification to taxpayers as to why a particular notice was issued or inform them it was issued in error.
15. Delay collection of refund offsets through December 2022, at a minimum, for low-income taxpayers as defined by IRS standards.

ISSUE TWO: The Compliance Effort Around Abusive Promoters and Preparers

Executive Summary

There is a vital compliance effort by the IRS addressing abusive tax preparers and promoters and/or anyone else who aids and abets the reporting of an abusive transaction and/or a false item that reduces the proper amount of tax due with a return. The IRS sees the issue of stopping abusive tax promotions and the use of simple return positions that have no merit in the law as a consumer protection program which protects taxpayers from falling victim to a person or persons who would take advantage of them by enabling a meritless position to be reported.

Generally, the Servicewide Office of Promoter Investigations focuses on identifying and authorizing civil investigations of those persons who create and promulgate abusive transactions. If a case is authorized by SB/SE's Lead Development Center (LDC), it is assigned to compliance staff, who are supported by IRS Chief Counsel (IRS Counsel) attorneys, to conduct an investigation. If there is evidence found to support it, a compliance action can then include the application of penalties; referral to the Department of Justice (DOJ) for possible injunctive relief; referral to the IRS Criminal Investigation function (CI); referral to the Office of Professional Regulation (OPR); and/or other internal remedies.

The IRS requested the assistance of the IRSAC to:

1. Improve the detection of abusive preparers, promoters, and enablers.
2. Identify other methods of ensuring compliance in addition to current processes.
3. Explore further collaboration and partnering with state taxing and regulatory authorities to increase compliance.
4. Help the IRS to more effectively communicate abusive transaction compliance actions in a manner that provides a greater deterrent to others; and,
5. Help the IRS better communicate with taxpayers to educate them about potential abusive activity.

The members of the IRSAC spent a significant amount of time communicating with a knowledgeable, hardworking, and dedicated group of IRS personnel regarding this matter and have worked together with them to formulate the recommendations set forth below. Some of the recommendations may already be under way.

Background

There are two general types of inquiries regarding abusive preparers and promotors and those who aid and abet them: 1) civil investigations or examinations and 2) criminal investigations. Under certain circumstances, there are simultaneous/parallel civil and criminal inquiries which follow strict and special procedures.

On the civil side, there are about 25 employees in IRS headquarters and 100 employees in the field involved in civilly investigating abusive preparers and promoters. The IRSAC believes that abusive promoter and preparer activity is very widespread and that 100 field employees are not sufficient. The IRSAC believes that the IRS should hire more field personnel of every type that are involved in this compliance effort. On the criminal side, the investigations are worked by special agents assigned to one of the 21 CI Field Offices across the nation. There is no specialized group of CI special agents assigned to this type of investigation. CI has been and still is experiencing a shortage of special agents compared to historical numbers. The IRSAC believes that it is important for more special agents to be available for the investigation of abusers. This would allow for more compliance penetration of abusive promoters and preparers.

The current organizational structure for detecting, investigating and pursuing abusive promotions and their perpetrators and aiders and abettors (aiders and abettors can be return preparers, attorneys writing legal opinions, actuaries, appraisers, CPAs, enrolled agents, or anyone else marketing or developing an abusive scheme) involves multiple operations located in different BODs.

The Lead Development Center (LDC) identifies and develops leads for both SB/SE and the TE/GE BOD.

In the LB&I BOD, the Technical Tax Shelter Promoter Committee (TTSPC) provides oversight of the LB&I Tax Shelter Promoter Program (TSPP) and has authority to approve LB&I tax shelter promoter/material advisor investigations. The Office of Tax Shelter Analysis (OTSA) 1) collects promoter information, 2) analyzes the information to identify trends and 3) disseminates the results to all stakeholders including those in LB&I, SB/SE, Treasury, and Congress. OTSA also provides recommendations to the TTSPC. Field investigation/promoter teams and their management structure are another part of the program which exists in SB/SE, LB&I and TE/GE.

Because the behavior of abusive promoters is constantly evolving and changing, the IRSAC believes that the IRS should implement continuous training for employees associated with the abusive promotions compliance effort.

Abusive promotions related criminal investigations fall under the same field management structure as all CI criminal investigations. However, CI headquarters has other support organizations. They include the national abusive schemes program falling under the Financial Crimes section within the office of Global Operations Policy and Support (OPS), as well as the Office of Refund Crimes (ORC) that oversees Resident Agents-in-Charge at the Scheme Development Center (SDC).

IRS Counsel provides support to examiners in the field and to move cases to the Department of Justice (DOJ). Although it has subject matter experts, the IRSAC believes that the IRS should work with IRS Counsel to develop more tax experts to help evaluate more complex schemes and tax matters. Abusive tax promoters are a very creative group of people and additional experts are needed to stay up with the ever-changing complex promoter activity.

Information technology is not a specific component of the organizational structure; however, Research, Applied Analytics and Statistics (RAAS) has tools used to identify promoters.

The IRSAC believes that the IRS would gain significant compliance efficiencies if it consolidated its anti-abusive promoter and preparer efforts into one unified task force with one overall management team.

IRS coordination with the Justice Department involves specified procedures. An injunction referral can be made to the DOJ if the preparer/promoter investigation team makes the determination that the preparer/promoter continues to organize and sell an illegal tax shelter and/or prepares tax returns with positions she or he knows to be unreasonable. Once a case is received, the DOJ can initiate a criminal investigation if it believes there is a criminal component and sufficient supporting evidence. DOJ also has procedures in place to request injunctions in some situations involving a criminal case related to preparer or promoter misconduct.

Once a civil abusive tax promotion investigation is closed with the assessment of a Code Section 6700 or 6701 penalty (deficiency procedures do not apply to these penalties), if the promoter or aider and abettor uses Section 6703 to partially pay the penalty and file a refund action in Federal District Court, it is defended by the DOJ.

The DOJ puts forth a very strong civil effort and plays a crucial role in the compliance effort against abusers. However, it would enhance the compliance effort even more if the DOJ increased its role by forming a cadre of attorneys exclusively assigned to litigation concerning abusive promotions and their perpetrators on a full-time basis. The IRSAC believes that the IRS should discuss this possibility with the DOJ.

In criminal investigations abusive scheme promoters can be investigated either administratively through the use of summonses and interviews to gather information and testimony or through a Grand Jury process.

In an administrative criminal investigation, the IRS may recommend the prosecution of subjects and support the recommendation with a Special Agent's Report (SAR) detailing the evidence of criminal violations for review and use by the DOJ.

In a grand jury investigation, CI special agents work with the United States Attorney's Office in a Judicial District to assist the grand jury with the investigation.

Coordination with state and local non-tax agency regulators of professional conduct, e.g., the Florida Department of Professional Regulation and other similar functions, is limited by Code Section 6103. However, if a Code Subsection 6694(b) understatement due to willful or reckless conduct penalty is assessed against a return preparer, a referral is required to be made to the OPR. A referral is optional if a Code Subsection 6694(a) understatement due to unreasonable positions penalty is assessed. This can lead to limiting the abusive return preparer's ability to practice in front of the IRS and to other disciplinary actions from their local licensing board(s). Additionally, if an indictment or plea is made public, the IRS can share this information with local regulating agencies including State Bars. The IRSAC believes that the IRS might benefit from working with Treasury to facilitate the broadening of Code Section 6103 authority to allow investigative information regarding abusive conduct and the names of those who engage in it to be shared with state and local regulatory and law enforcement authorities.

The majority of civil field investigations regarding abusive promoters and preparers originate from a direct lead sent to the LDC from both internal and external sources. Leads also come from ongoing investigations, state and local governments, the Return Preparer Coordinator (RPC), the CI Fraud Detection Center, IRS Counsel, Business Operating Divisions, the Return Preparer Office (RPO), and the Frivolous Return Preparer Program at the Ogden Utah Service Center. Leads in the form of referrals (referrals generally have more information included) also originate from OTSA.

With respect to criminal investigations, CI has consistently identified abusive return preparers through a number of avenues including internal fraud referrals from IRS functions and external information/leads from informants or the Industry Leads Team (ILT). CI collaborates with the RPO and reviews complaints on return preparers filed with that office. RPO complaints are also added to the Return Preparer Database (RPD). CI uses a number of databases and data analytics tools and techniques developed for detection purposes.

Internal referrals are given to the LDC or TTSPC to review. For example, microcaptive promoters were identified years ago during examinations, and later through information gained from the Transaction of Interest (TOI) notice.

During the course of promoter investigations, business providers, who referred clients to a promoter, are summoned to provide all documents and communication related to the promoter and their program. Review of this information can lead to additional income tax examinations if additional clients of the promoter are identified. If warranted, the business providers participating in the promoter's referral network can be subject to an investigation as a co-promoter.

A large component of abusive preparers are unenrolled return preparers serving lower income clientele who promote their services by promising to deliver a larger refund than a nearby competitor. Their abuses are typically based on simple tax issues such as itemized deductions and refundable tax credits. In contrast, tax shelter promoters are typically dealing with more technical and complex schemes. In complex cases, occasionally, the promoter may also be the preparer, but this is less common.

At the current time, there is a Form 211, *Application for Reward for Original Information*. This form does not allow a quick, small reward for information. There is no form that can be filed by a taxpayer for a small, quick reward for original information regarding an abusive preparer or promoter. The IRSAC believes that the IRS should create a Form 211P, *Application for a Rapid Reward for Original Information Regarding Abusive Preparers and Promotors*, allowing for a rapid reward up to $1,000. The IRSAC also believes that the IRS should develop posters (including a poster that includes "The Dirty Dozen" tax scams, in multiple languages) which spotlight the Form 211P, place them in locations where the abusive preparer's victim/client demographic shops such as check cashing stores, mini marts, convenience stores, drug stores, grocery stores, and post offices, and have more public service announcements on AM and FM radio stations that serve this demographic that mention the Form 211P. Creating a Form 211P and publicizing it as stated above would allow for more

rapid harvesting of leads and investigative data concerning the abuser community who service lower income taxpayers.

Also, if an abnormal refund to a lower income taxpayer is detected, the taxpayer currently receives a letter from the IRS regarding the suspected noncompliance. The letter does not include a reference to any reward program. The IRSAC suggests that the IRS create a “soft letter” that includes the Form 211P suggested above as an enclosure to send to taxpayers with abnormal refunds whose cases cannot be worked due to staffing levels or relatively low dollar amounts.

The IRS is dedicated to utilizing data in every lawful manner to be smarter about identifying the best and most productive work and shortening the time spent on examinations/investigations. It is exploring Artificial Intelligence and data mining to support the traditional “beating the street” examination work that is so time and cost intensive. Within LB&I, data analytics has been used to identify and develop High Impact Investigations and Emerging Trends in the individual and business arena. The analysis of different data sets against each other helps to identify abusive schemes and promoters. Similarly, RAAS can help identify promoters through analysis of their behaviors.

The IRSAC believes that the IRS should, like it did in the Offshore Voluntary Disclosure Program, develop a consolidated, searchable database that is available to, and searchable by, all of the members of the task force suggested above and to DOJ attorneys assigned to work on task force generated matters.

In order to publicize successful compliance efforts (obtaining an injunction or a criminal conviction) and the anti-abusive preparer and promoter compliance functions, the IRS uses a variety of tools including taking advantage of its Public Information Officers and Public Affairs Officers cadre to use print, broadcast, radio, and social media to reach external audiences. The IRS personnel involved in this function also participate in a variety of outreach and public speaking events with stakeholders around the country. These events are great opportunities to spotlight case studies of recently completed cases. Cases are also prominently mentioned in the CI end of fiscal year annual report.

Targeted media campaigns are also used. For example, if a story is done regarding a fraud scheme affecting the elderly, the IRS tries to have it aired on the national evening news where a majority of the elderly get their news. The IRS constantly updates and publishes "The Dirty Dozen" list.

CI's publicity generally targets a specific geographic area where the criminal behavior occurred. Some particularly egregious or high-profile cases are picked up nationally. In trying to garner as much publicity as possible to maximize the deterrent effect, multiple indictments, sentences, pleas, search warrants and other enforcement activity are sometimes bundled in a press release to coincide with the filing season. More specifically, because the IRS strongly believes in the deterrent effect provided by promoting the results of criminal prosecution, CI publicizes the results of all sentenced cases where those convicted have received one year or more of incarceration.

The IRSAC believes that the IRS is doing an excellent job publicizing successful compliance efforts but should consider fine tuning the story released to be specifically interesting and appealing to the demographic being targeted.

Recommendations

Internal Operations

1. Upgrade technology and systems to provide the IRS capable tools to address complex noncompliance by implementing enhanced shared drive capability, the ability to upload documents, and making improvements that automate manual processes to free up time for investigative support work.
2. Implement continuous training for existing employees associated with the abusive promotions compliance effort.
3. Create a well-equipped and specialized, independent function (an Abusive Promotion Termination Task Force (APTTF)) with dedicated, attached Revenue Agents, Revenue Officers, Special Agents, Tax Analysts, Data Analysts, and Chief Counsel attorneys, who are assigned to the same management team.

4. Develop a unified database of information obtained from the various civil and criminal enforcement efforts regarding, who, what, when, where, and how a scam was promoted that can be accessed and searched by all APTTF personnel, and utilize data scientists to explore the database for common terms and phrases used by abusive promotors, preparers and their aiders and abettors and use those terms and phrases to do internet searches to locate abusers and their aiders and abettors.

Partnering & Collaboration

5. Increase the sharing of information on abusive promoter, preparer and aider and abettor penalty investigations with state and local law enforcement and professional regulators to leverage enforcement (subject to the enactment of the legislation suggested in recommendation eight below).

Outreach & Legislation

6. Inform and educate Congress and its staffers on the importance of, and the need for, enhanced legal authority to more expeditiously penalize abusive promoters and preparers.
7. Establish a dedicated, specialized, rapid reward program for “tips” leading to abusive preparers and promotors by creating a Form 211P and widely publicize it.
8. Work with Treasury to inform Congress and its staffers of the need to broaden Code Section 6103 authority to share information on preparer, promoter and aider and abettor penalty investigations with state and local law enforcement and professional regulators.
9. Create a “soft letter” that includes a Form 211P as an enclosure to send to taxpayers with abnormal refunds whose cases cannot be worked due to staffing levels or relatively low dollar amounts.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Tax Exempt and Government Entities Subgroup Report

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INTRODUCTION

The IRSAC Tax Exempt & Government Entities (TE/GE) subgroup is a diverse group of eight members working collaboratively with representatives of TE/GE regarding a broad range of issues, including employee plans, exempt organizations, Indian tribal governments, state and local government entities and tax-advantaged bonds. The subgroup members include attorneys, certified public accountants and financial and benefit advisors. The TE/GE subgroup is grateful for the cooperation we received from members of the Tax Exempt and Government Entities Division of the IRS in producing this report. Our report addresses the following three topics:

- Consider researching and providing feedback on the thresholds associated with filing the Forms 990-N and 990-EZ,
- Reduction of private letter ruling fee applicable for tax-advantaged bonds for government issuers, and
- Update, expand and promote online IRS guidance for public sector/governmental entities.

ISSUE ONE: Form 990-N and 990-EZ Thresholds

Executive Summary

Tax-exempt organizations, nonexempt charitable trusts, and Section 527 political organizations are required to file an annual return on a 990 series Form to provide the IRS with the information required by Section 6033. Currently there are three forms in the Form 990 series that use thresholds on gross receipts[89] and assets in order to determine which form an entity should file: (a) Form 990-N if gross receipts are $50,000 or less; (b) Form 990-EZ if, generally, gross receipts are more than $50,000 but less than $200,000, and total assets are less than $500,000; and (c) Form 990 if gross receipts are $200,000 or more, or if total assets are $500,000 or more.

Background

Section 6033(a)(1) requires the filing of annual information returns by tax exempt organizations. Section 6033(a)(1) provides certain mandatory exceptions to the filing requirement and Section 6033(a)(3)(B) grants the Secretary discretion to add exceptions where an annual filing is not necessary to the efficient administration of the internal revenue laws. Section 1.6033-2(g)(6) of the Treasury Regulations delegates authority to the Commissioner to grant such exceptions "where he determines that such returns are not necessary for the efficient administration of the internal revenue laws." Under that discretionary authority the threshold for filing a 990 series Form has increased over time from $10,000 to $25,000 in 1982[90] and finally in 2011 to the current $50,000 threshold for tax exempt organizations other than private foundations or certain supporting organizations.[91] This threshold is now set forth in Treas. Reg. Section 1.6033-2(g)(1)(iii), and organizations below that level are eligible to file a Form 990-N (e-Postcard) or may voluntarily choose to file a full return. Because this threshold is

[89] Private foundations must file Form 990-PF and are not eligible to file Form 990, 990-EZ or 990-N regardless of gross receipts levels. *See* Treas. Reg. §§ 1.6033-2(a)(2)(i) and 1.6033-2(g)(1)(iii).
[90] Announcement 82-88 increased the threshold for Form 990 filing to $25,000 for tax years ending on or after Dec. 31, 1982.
[91] Rev. Proc. 2011-15 increased the threshold for Form 990 filing to $50,000 for tax years beginning on or after Jan. 1, 2010.

now contained in the Treasury Regulations, it would require a statutory or regulatory change to revise the $50,000 threshold.

In Treasury Decision (TD) 9898, it was stated: "The Treasury Department and the IRS continue to consider the $50,000 threshold to strike an appropriate balance between the efficient use of resources for both tax-exempt organizations and the IRS, and ensuring compliance with the tax laws by tax-exempt organizations."[92]

For tax years beginning after 2006, Section 6033(i) provides that entities not required to file an annual information return because of gross receipts levels shall submit an annual electronic notification form to the IRS.[93] The notification contains only basic information including the entity name, address, EIN, name and address of a principal officer and confirmation that the entity continues to be exempt from the Section 6033(a)(1) filing requirements.

Entities that are required to file a Form 990 under Section 6033(a)(1) may be able to file the Form 990-EZ if gross receipts and total assets are under a certain threshold. These thresholds have been in place since the debut of the Form 990-EZ in 1989 and have increased over time. As stated in the 1989 instructions for Form 990-EZ at page one: "An organization may file Form 990-EZ, instead of Form 990, for 1989 if it meets BOTH of the following requirements: its gross receipts during 1989 were less than $100,000 AND its total assets … at the end of 1989 were less than $250,000."

With the Form 990 redesign in 2008, the IRS announced a graduated transition period for smaller organizations and the 2009 returns settled at the current thresholds of less than $200,000 in gross receipts and $500,000 in assets. The thresholds are set in the form instructions and changes were announced by the IRS in an IRS News Release for the 2008 transition.

Publication 6292, *Fiscal Year Return Projections for the United States: 2020-2027, Spring 2020*, was referenced to research total filers for the Forms 990, 990-EZ and 990-N and evaluate current thresholds.

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[92] *See* 85 Fed. Reg. at 31962.
[93] *See also* Treas. Reg. § 1.6033-6 (2009).

The total entities filing the Form 990-N has grown to be the largest group of filers and increases annually in both total filers and percentage of filers. For FY 2019 54% of filers, or 651,691, were completing the Form 990-N. Entities filing the Form 990 made up 26% and the remaining 20% were entities filing the Form 990-EZ.

Looking at just the entities required to file an annual return under Section 6033(a)(1), the percentage of entities filing the Form 990-EZ versus the full Form 990 has increased over time. During FY 2010, when the threshold increased, only 43% of entities completed the full Form 990 and 57% filed the Form 990-EZ, whereas in FY 2019 this percentage flipped and 57% of entities completed the full Form 990 and only 43% completed the Form 990-EZ. The total number of entities filing the Form 990 or 990-EZ has remained relatively steady over the same period at around 550,000.

From a preparer's administrative perspective, the relative ease and efficiency of filing a short form encourages compliance and timely reporting, and from the perspective of the IRS, the administrative burden must be balanced with collecting sufficient information for effective administrative of the tax laws. The issue of whether to adjust the thresholds at this point in time is therefore somewhat dependent on what level of non-compliance is being detected in the more detailed Forms 990 and 990-EZ. Assuming that some level of modest adjustment tied to increases in cost of living would not skew the current level of compliance, the IRSAC offers the following recommendations to maintain the historical balance between compliance limitations and taxpayer burden and encourage timely reporting.

Recommendation

1. Keep the exception for allowing the filing of the Form 990-N at a $50,000 limit to facilitate enforcement efforts by continuing to obtain the information submitted on Form 990 or 990-EZ by organizations above that gross receipts threshold.
2. Increase the threshold for the Form 990-EZ to account for increases in the cost of living.

ISSUE TWO: Reducing the User Fee for Private Letter Rulings for Local, State, and Indian Tribal Governments Related to Tax-Advantaged Bonds

Executive Summary

The IRSAC is recommending that the IRS reduce the user fee (the User Fee) for private letter ruling (the PLR) requests for local, state and Indian tribal governments (the Issuers) related to tax-advantaged bonds.[94] Tax-advantaged bonds are generally subject to certain requirements under the Code in connection with the use and expenditure of proceeds, and restrictions on the investment thereof. Compliance with such requirements and restrictions is crucial in maintaining certain tax advantages with respect to such bonds. The PLR process allows Issuers to comply with the Code despite complex circumstances. The recommendation to reduce the User Fee is intended to make the PLR process feasible for *all* Issuers of tax-advantaged bonds in seeking clarification of the tax law, irrespective of the size of the Issuer, thereby ensuring more frequent voluntary tax compliance. The continuing increase of the User Fee for PLRs discourages and inhibits voluntary tax compliance. In 2021, the User Fee for a PLR increased 26.7% from the previous year. Tax compliance is critical for local, state and Indian tribal governments because of the standard for issuing unqualified opinions for tax-exempt bonds.

Background

The IRS released Revenue Procedure 2021-1[95] identifying current User Fees for PLRs and determination letters. In 2021, the standard User Fee for PLR requests increased to a maximum amount of $38,000 from a fee of $30,000 in 2020. Reduced User Fees are provided for Issuers with annual operating revenues less than $250,000 ($3,000 User Fee) and for Issuers with annual operating revenues less than $1 million ($8,500 User Fee). Most Issuers have

[94] Treas. Reg. § 1.150-1(b) defines a "tax-advantaged bond" as "a tax-exempt bond, a taxable bond that provides a federal tax credit to the investor with respect to the issuer's borrowing costs, a taxable bond that provides a refundable federal tax credit payable directly to the issuer for the bond for its borrowing costs under Section 6431, or any future similar bond that provides a federal tax benefit that reduces an issuer's borrowing costs."

[95] Rev. Proc. 2021-1, 2021-1 I.R.B. 1 (Jan. 4, 2021).

annual operating revenues over these thresholds and do not have the extra resources to pay the higher User Fee. The standard User Fee was determined based upon several variables including the average time spent on responding to a PLR request, average attorney costs and overhead, "a decline in the overall number of rulings issued, and an increase in the relative complexity of rulings that are requested."[96]

PLRs are valuable not only for the requesting Issuer, but also for future Issuers, the IRS, and taxpayers. Although PLRs may not be relied on as precedent, they are useful public resources from which other Issuers who are considering financing projects under analogous circumstances may understand the current thinking of the IRS. In particular, PLRs provide valuable insight to issuers of tax-advantaged bonds into what is not compliant with tax laws. This greater guidance for Issuers results in fewer instances of non-compliant financings, reduced IRS enforcement costs and less taxpayer money lost to regulatory and procedural misunderstandings.

The purpose of User Fees is to allow federal agencies (such as the IRS) to recapture costs for services provided to identifiable recipients, services which are not part of an agency's basic services benefiting the general public.[97] Federal agencies are authorized to charge User Fees under the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. The User Fees must be fair and related to the service costs borne by the agency. Policies of the President set forth in Office of Management and Budget (OMB) Circular A-25[98] allow agencies to make exceptions to their User Fee rules, charging lower User Fees for certain parties in certain circumstances. Under Section 7528 of the Code, the IRS is charged with establishing a program requiring the payment of User Fees for PLRs, among other similar requests. Section 7528 of the Code further provides that the Secretary of the Treasury ("Secretary") shall provide for exemptions from

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[96] Counsel Statement and Invitation for Public Comment on PLR User Fee Increase (Jan. 4, 2021) www.irs.gov/newsroom/counsel-statement-and-invitation-for-public-comment-on-plr-user-fee-increase.
[97] OMB Circular A-25, 58 Fed. Reg. 38142 (July 15, 1993).
[98] *Id.*

the User Fee requirement (and reduced fees) as the Secretary determines to be appropriate. This flexibility is reflected in Internal Revenue Manual (IRM) Section 1.35.19, which directs IRS business units to consider various criteria in setting User Fees, including the effect of new User Fees on voluntary compliance and taxpayer burden and the expected change in demand for service resulting from a new User Fee. Ultimately, the IRM directs the IRS to "avoid[ ] fees that increase enforcement costs, reduce voluntary compliance or otherwise create difficulties in achieving the IRS's mission."[99]

Table 2: User Fee Cost and PLRs Issued for Years 2006 – 2021[100]

Year Based on PLR Number	User Fee	Number of Tax-Exempt Bonds PLRs Issued
2006	$10,000	12*
2007	$10,000	11†
2008	$11,500	16
2009	$11,500	10
2010	$14,000	3
2011	$14,000	11
2012	$18,000	5
2013	$18,000	6
2014	$19,000	6
2015	$28,300	7
2016	$28,300	6
2017	$28,300	7
2018	$28,300	4
2019	$30,000	1
2020	$30,000	3
2021	$38,000	Ongoing

* Does not include counts for designations as qualified green building.
† Does not include counts for Section 54 allocations.

[99] IRM 1.35.19.15(3).
[100] Letter from Richard J. Moore, President, National Association of Bond Lawyers, to Charles P. Rettig, Comm'r, IRS (Nov. 4, 2019) (referencing the number of PLRs issued from 2006 to 2018 according to searching CC:FIP:B5, CC:FIP:Br5, CC;FIP:B05: CC;TEGE:EOEG:TEB, CC:FIP:Branch 5; and EOEG:TEB for the relevant years in a PLR database). Data provided by searching CC:FIP:B5, CC:FIP:Br5, CC;FIP:B05: CC;TEGE:EOEG:TEB, CC:FIP:Branch 5; and EOEG:TEB for the years 2019 and 2020 in a PLR database.

From the data provided in the above referenced chart, it appears that there is generally a direct correlation between the increase to the User Fee for PLRs and the decrease in the number of PLRs that are issued by the IRS. Recognizing that the User Fee for PLRs might be preventing taxpayers, including local, state and Indian Tribal governments, from utilizing the PLR process, the Office of Chief Counsel earlier this year requested comments on "alternative fee structures that could better match the fee charged with the complexity and work involved in issuing the ruling."[101]

The mission of the IRS is to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all".[102] The current PLR User Fee system appears to be at odds with that mission statement. Given that Issuers of tax-advantaged bonds represent and serve the interest of the general public and individual taxpayers, and that a high User Fee inhibits Issuers with fewer economic resources (most Issuers, but particularly governments representing smaller communities or communities with lower-income taxpayers) from requesting PLRs, the IRS should reduce the User Fee required of Issuers in order to stay true to the precepts of helpfulness, integrity, and fairness to all.

Recommendation

1. Reduce the User Fee for PLRs for local, state and Indian Tribal governments related to tax-advantaged bonds by taking into account the public benefits of PLRs and the burden from User Fees that prevent Issuers from requesting PLRs.

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[101] Counsel Statement and Invitation for Public Comment on PLR User Fee Increase (Jan. 4, 2021) www.irs.gov/newsroom/counsel-statement-and-invitation-for-public-comment-on-plr-user-fee-increase.

[102] The Agency, its Mission and Statutory Authority, (last updated Sept. 8, 2021) https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority.

ISSUE THREE: Update, Expand, and Promote Online IRS Guidance for Federal, State, and Local Governments

Executive Summary

Federal, state, and local government (FSLG) entities are subject to tax withholding and reporting requirements based on the Code, regulations, and rulings. While many requirements applicable to governmental entities are similar or equivalent to other taxpayer entities in the general business community, federal legislation can mandate unique requirements, limitations, and exclusions for the FSLG community. The FSLG community needs clear guidance to ensure accurate interpretation and timely implementation of these unique federal requirements.

The IRS is to be commended for the recent launch in September 2021 of the redesigned Tax Information for Federal, State, and Local Governments webpage on irs.gov. The IRSAC recommends additional enhancements to further benefit the FSLG community, including FSLG-specific Question and Answer (Q&A) guidance for future, unique legislative requirements, additional website enhancements, and expanded communication of the available resources to the FSLG community. These recommendations serve to further the goals of the TFA by strengthening communications and improving taxpayer service.

Background

Historically, the IRS has provided information to the FSLG community to assist government entities in meeting their federal tax obligations. Access to accurate, timely guidance is necessary for FSLG entities to comply with withholding and reporting requirements that are unique to public sector employers.

The IRSAC recognizes and applauds how the IRS and the overall taxpayer community have and continue to heroically encounter and overcome the challenges of the COVID-19 pandemic. Federal legislation passed in response to the challenges arising from the pandemic resulted in unique requirements that impacted the FSLG community differently from the general

business tax community. For example, the Families First Coronavirus Relief Act (FFCRA) which required FSLG entities to comply with FFCRA leave requirements but excluded governmental employers from claiming the tax credits under Section 7001 and 7003 of the FFCRA, serves as just one example of legislation which contains requirements unique to the FSLG community.

The IRSAC acknowledges the challenges faced in developing and issuing timely guidance following the passage of new legislation; however, to ensure compliance and accuracy in application of unique requirements, such guidance is required by the FSLG community. For example, clarifying information regarding the 2020 Form W-2 reporting requirements for governmental employers for FFCRA wages was issued by the IRS in March 2021 as Q&A 54e under a heading of "Special Issues for Employers: Other Issues" in a section of the IRS Newsroom.[103] Unfortunately, the clarification provided in the March FAQ applied to Forms W-2 that were issued with a January 31, 2021 deadline. The timely, upfront inclusion of unique requirements for public sector entities in future IRS instructions, bulletins, and notices will provide the detailed guidance on which public sector entities can rely to ensure compliance.

In addition, due to the timing and location of the March FAQ, the information was difficult to locate and may not have been reviewed by impacted governmental employers. The lack of a Q&A section specific to the FSLG community that can be referenced and reviewed for updates related to unique FSLG requirements raises the risk of non-compliance as important information and clarifications may be overlooked by impacted entities.

Recommendation

1. Develop a timely, stand-alone FSLG Q&A section to provide information about legislative requirements unique to the FSLG community.
2. Enhance the updated FSLG website through addition of a 'Recent Developments' section providing direct access from the FSLG landing

[103] www.irs.gov/newsroom/special-issues-for-employers-taxation-and-deductibility-of-tax-credits.

page to additional resources, such as the recent IRS news release regarding updates to the FAQ process,[104] required to ensure compliance with new and developing requirements (e.g., COVID-19 resources).

3. Review and update existing resources to ensure unique FSLG guidance is included.
4. Promote existing resources and the newly updated FSLG website through partnership with industry groups that serve FSLG entities.

[104] IR-2021-202, IRS updates process for frequently asked questions on new tax legislation and addresses reliance concerns (Oct. 15, 2021), https://www.irs.gov/newsroom/irs-updates-process-for-frequently-asked-questions-on-new-tax-legislation-and-addresses-reliance-concerns.

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

Wage & Investment Subgroup Report

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INTRODUCTION

The IRSAC Wage & Investment (W&I) subgroup is a collaborative group of seven members including CPAs, enrolled agents, attorneys, small business owners, software developers, payroll professionals, and volunteer income tax assisters. The members' collective tax experience includes accounting and tax return preparation (ranging from solo practitioners to large, commercial tax preparation firms), tax industry operations liaison, tax planning and advice, information technology consulting and software development, payroll processing, and representation of individual and business taxpayers from many segments of our society. The W&I spectrum covers a large and diverse population of taxpayers with a wide range of income and tax return complexity. W&I encompasses tax return processing, forms publication, electronic products and services, preventive and corrective identity theft programs, and the overall administration for delivering timely, accurate, and excellent service while reducing taxpayer burden.

The COVID-19 pandemic presented the IRS with many opportunities to assist American workers, families, businesses, and industries with much needed tax relief provided by the CARES Act, the Consolidated Appropriations Act, and the American Rescue Plan Act of 2021. During this past year, our subgroup worked closely with our IRS W&I colleagues to provide feedback and recommendations to help improve taxpayer service, compliance, and administration. At the request of the W&I Division, our report addresses the following five topics:

- Review and Promote the Paid Preparer Due Diligence Training Module,
- Determine the Usefulness of Publication 535, *Business Expenses*,
- Determine the Usefulness of Publication 938, *Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs))*,

- Encourage Taxpayers to Maximize the use of Electronic Filing of all Tax Returns, Forms, and Payments Programmed for Intake Using the electronic Modernized e-File (MeF) Platform to Expedite Processing, and
- Improve the Taxpayer Experience with the Taxpayer Digital Communication – Outbound Notification (TDC-ON) Application (recently renamed as the Digital Notices and Letters (DN&L)).

We thank W&I Commissioner Ken Corbin, and the many IRS personnel with whom we've worked closely this year for their cooperation and assistance in developing this report and for their recognition of the Subgroup as an integral resource. We especially thank our liaisons for their guidance and facilitation of our service, providing information, advice, and access to essential IRS personnel needed to develop our report.

ISSUE ONE: Review of Paid Preparer Due Diligence Training Module

Executive Summary

The IRS has asked the IRSAC for feedback and suggestions for improving the Due Diligence Training Module available on www.irs.gov.[105] This training module is used by paid tax preparers to help them better understand their responsibilities regarding certain tax credits and benefits for eligible taxpayers. The IRS recognizes that the training is outdated and is interested in making it more interactive, engaging, and current, and is also seeking ways to increase visibility of the course and encourage participation by more users.

Background

Tax preparers who collect a fee in exchange for preparation of a tax return that includes the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), Credit for Other Dependents (ODC), American Opportunity Tax Credit (AOTC), or Head of Household (HOH) filing status are subject to four Due Diligence requirements that must be met on every return that includes one or more of these tax credits or benefits. Treasury Regulation Section 1.6695-2(b) requires paid preparers to meet the following:

1. Complete and submit Form 8867, *Paid Preparer's Due Diligence Checklist*,[106] based on information obtained from the client or information otherwise reasonably obtained or known by the preparer. Form 8867 must be submitted electronically with e-Filed returns or submitted in hard-copy with a return that is not e-Filed.
2. Complete appropriate worksheets to determine the amount of each applicable credit based on information obtained from the client or otherwise reasonably obtained or known by the preparer. The worksheets used for these calculations can come directly from the IRS publications, forms, instructions, and other supporting documents, or the preparer's

[105] https://www.eitc.irs.gov/tax-preparer-toolkit/due-diligence-training-module/eitc-due-diligence-training-module.
[106] https://www.irs.gov/pub/irs-pdf/f8867.pdf.

own similar worksheets as long as appropriate records are kept to show what information was used and how the computations were made.

3. Exercise knowledge in making appropriate determinations for assessing a client's eligibility for one of the credits. This includes not knowing or having reason to know that any information used to claim the credits or HOH filing status is incorrect or ignoring implications of any information given to the preparer. Further, if a reasonable and well-informed tax return preparer, knowledgeable in the law, would conclude the information furnished appears incorrect, inconsistent or incomplete, the preparer must make additional inquiries of the client to clarify their situation and confirm eligibility for the credit and/or filing status. Preparers must document the inquiries and responses and make every attempt to obtain all relevant information.
4. Retain appropriate records for three years. Preparers must maintain copies of all relevant information to claiming the credits/filing status on the return for at least three years.

Preparers who fail to meet these requirements are subject to a monetary penalty for each failure in the amount of $500, which is indexed for inflation. For returns filed in 2021, the penalty is $540 for each occurrence. A return filed with a failure in each of the four applicable credits or filing status could be assessed a penalty in the amount of $2,160.

The IRS tracks paid preparers by requiring them to register and use a Preparer Tax Identification Number (PTIN) on all returns completed for compensation. Because the IRS cannot further expand requirements on paid return preparers other than to have them obtain and use a PTIN,[107] introducing any sort of requirement to incorporate this Due Diligence training linked to PTIN registration or renewal would not be allowed.

[107] Loving v. IRS, 917 F.Supp.2d 67 (2013), aff'd Loving v. IRS, 742 F.3d 1013 (2014), cert. denied.

The IRSAC suggests, however, that the IRS consider increasing visibility of the due diligence course by advising of its availability at the time of PTIN registration or renewal. Including a new screen in the registration/renewal process or amending an existing screen to including a screen that specifically advises PTIN holders that they can be held liable for due diligence shortcomings on returns they prepare and advising them of associated fines and penalties for those failures, along with a link to this course at an appropriate point in the PTIN process could be helpful to increase awareness.

When the IRS brought this issue before the IRSAC seeking recommendations for improvements, many IRSAC members were unaware of the substantial penalties involved for failure to meet the Due Diligence requirements. It therefore stands to reason that many preparers are likely unaware of either the requirements they must meet or the potential penalties involved for failure to meet said requirements. Because the IRS will hold paid preparers liable for failure to meet the due diligence requirements, the IRS should take additional steps to be sure paid preparers know what standards they will be held to.

There are 770,000 tax professionals with active PTINs, but of those, about 53% (over 405,000) are not required to obtain continuing professional education on a recurring basis. Enrolled Agents (EAs), Enrolled Retirement Plan Agents (ERPAs), and participants in the IRS Annual Filing Season Program (AFSP) are required to acquire formal continuing education from an IRS-approved provider. Additionally, those with the Certified Public Accountant (CPA) and Juris Doctor (JD) designations are subject to Due Diligence requirements as well and are subject to continuing education requirements through their state licensing board. Unenrolled preparers who do not voluntarily participate in the AFSP are not subject to continuing education requirements.

The IRS maintains a consolidated list of Continuing Education Providers[108] where return preparers can search for sources to meet their continuing education requirements. While the IRS itself appears in this list, it has no distinction from

[108] https://www.ceprovider.us/public/default/listing.

any other provider. Giving the IRS more prominence in the listing, or perhaps even separating the IRS resources from the non-IRS resources by moving mention of the IRS information to the top of the page preceding the list, would keep the IRS continuing education resources from getting lost in the register of nearly 500 other providers.

During calendar year 2020, the IRS contacted approximately 16,000 return preparers who had prepared over 5 million returns as part of the IRS's Return Preparer Strategy. These educational letters advise preparers that due diligence requirements may not have been met and inaccurate returns may have been prepared which included HOH filing status, CTC/ACTC, ODC, AOTC, and/or EITC.[109] The IRS has developed a methodology to identify returns with a high chance of errors that were completed by the same preparer. When the IRS reaches out to these preparers using this predetermined contact algorithm, the IRSAC recommends including information about the availability of this course as a training and educational tool to modify and correct preparer compliance and performance going forward.

The IRS also asked the IRSAC to provide suggestions and feedback on ways to make the training course itself more interactive and engaging for users. Initial feedback include suggestions to collaborate with other IRS divisions who currently use more synergistic training platforms (such as the VITA/TCE program) to obtain ideas, as well as ideas to utilize audio or video tools as the current version of the course is strictly reading and simple interactive questions placed throughout the course. As the current vendor and platform do not allow incorporation of channels other than text and question/answer set up, the IRS is unable to add additional interactive features to the training module without a more robust overhaul. As a result, the IRSAC believes that evaluation of an additional investment in the refurbishment of the course may be necessary and appropriate.

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[109] More information on preparer compliance for due diligence is available at https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-compliance-focused-and-tiered/auditing-for-due-diligence-compliance .

For fiscal year 2020, the IRS estimates improper payment amounts related to EITC, ACTC, and AOTC to be around $16 billion, $4.5 billion, and $2.3 billion, respectively.[110] As the IRS holds preparers responsible for policing much of the regulation associated with these improper payments as they apply to assisted returns, it is a reasonable assumption that the cost of renovating and promoting a reconditioned module would be much less than these estimates. Before providing additional feedback on modernization ideas, the IRSAC recommends that appropriate departments within the IRS obtain a Very Rough Order of Magnitude (VROM) followed by submission of a Development, Modernization & Enhancement (DME) request to estimate the cost to improve the training.

After guidance on the potential availability of additional funds to enhance this course is available, the IRSAC would be obliged to continue to offer feedback and suggestions to improve the due diligence training module.

Recommendations

1. Market the course's availability (without making it a requirement) during annual PTIN registration/renewal.
2. Separate the continuing education resources available directly from the IRS from those accessible from other providers on the CE provider listing.
3. Adjust wording of letters used to contact paid preparers about due diligence issues to advise of the availability of this course.
4. Consider using a more interactive and engaging training platform, including audio/video like the one used for VITA/TCE training.

[110] Estimates mentioned here include both assisted returns (prepared by a paid preparer) and self-prepared returns (prepared by the taxpayer).

ISSUE TWO: Determining the Usefulness of Publication 535

Executive Summary

During a review of several IRS forms and publications, Publication 535, *Business Expenses*, was identified as a publication the IRS spends significant limited time and resources to compile with relatively small taxpayer usage**.** In addition, questions have been raised regarding the clarity of content, population of users and redundancy of content which is contained in other IRS publications and products. Although the publication has potentially broad appeal for taxpayers filing individual as well as business income tax returns, the relatively low usage rate, and other resources available to taxpayers, suggests the content of Publication 535 may be redundant.

Background

The IRS creates new publications and products when the IRS identifies specific taxpayer needs for resources. However, there are no established procedures to remove products once taxpayers' needs change and these changes are identified by the IRS. Publication 535 was first published for tax year 1994.[111]

The target audience for Publication 535 is aligned with the small business and self-employed taxpayer and based on returns filed; potential users include approximately 57.6 million taxpayers.[112] The potential Publication 535 users are as follows:

- 47 million Schedule C, E or F filers
- 6.8 million corporation filers
- 3.8 million partnership filers

The content of Publication 535 is broad and covers many complex federal income tax deductions and concepts. However, the coverage and explanation of

[111] Information provided by IRS W&I Tax Forms and Publications.
[112] IRS Tax Statistics, https://www.irs.gov/statistics.

some federal income tax deductions and concepts is not comprehensive and, in many instances, would require taxpayers to seek additional information and guidance from other resources. For example, review of the Publication 535 Index reflects over 100 deduction topics and concepts which would require much more in-depth coverage to be useful for taxpayers and tax professionals.

Publication 535 is a compilation of information that is available within other IRS resources and therefore, compiling and publishing federal income tax deductions and other concepts in Publication 535 may be considered redundant. After IRS review of visits to About Publication 535, Business Expenses (https://www.irs.gov/forms-pubs/about-publication-535), the year over year order of printed copies of Publication 535 for tax years 2018 and 2019 decreased by over 50% from 13,614 in 2018 to 6,400 in 2019. In addition, the IRS has not received any comments over the last three years from the taxpayer community regarding Publication 535.

After multiple conversations with the subject matter experts in W&I Tax Forms and Publications, we came to a consensus that the IRS should discontinue producing Publication 535, establish criteria to identify redundant and obsolete products, and shift resources to products with greater taxpayer appeal.

Recommendations

1. Phase out Publication 535 over the next two years and include guidance for taxpayers regarding alternative resources and methods to access information regarding business deductions.
2. Establish criteria to identify IRS publications and products with declining taxpayer appeal and usage.

ISSUE THREE: Determining the Usefulness of Publication 938

Executive Summary

During a review of several IRS forms and publications, Publication 938, *Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs)),* was identified as one that the IRS spends significant time and limited resources to compile with relatively small taxpayer usage**.** Given the unique nature of REMIC and CDO issues that are not publicly traded, information about them is not publicly disseminated by a neutral third-party such as the SEC, therefore making the IRS the source of record for creations, additions and deletions. The value of this IRS directory will be augmented significantly by creating a searchable database in place of the existing quarterly publication, while reducing the time and resources required to compile the directory.

Background

Treasury Regulation Section 1.6049-7(b)(1) requires every REMIC and issuer of a CDO to file Form 8811, *Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations*, no later than 30 days after the startup day of the REMIC or issue date of the CDO. Additionally, Form 8811 is used with the word "AMENDED" across the top for a change in the information previously provided on Form 8811 or with the word "VOID" across the top if the REMIC or CDO issuer ceases to have an outstanding interest.[113] The REMIC or issuer of the CDO is required to provide:

- their name and address
- the name and address of the representative to be contacted by persons specified in Treasury Regulation Section 1.6049-7(e)(4)
- the CUSIP number (a nine-character alphanumeric code that identifies a North American financial security for the purposes of facilitating clearing and settlement of trades), and

[113] Form 8811 General Instructions (Rev. Aug. 2013), https://www.irs.gov/pub/irs-pdf/f8811.pdf.

- certain other identifying information as available or required by Treasury Regulation Section 1.6049-7(b).

Treasury Regulation Section 1.6049-7(e)(5) stipulates the IRS will produce Publication 938 as a directory of the startups, amendments and voids reported on Form 8811. It is currently provided in both a PDF and an HTML format. During 2019, there were 1,811 additions, and 19 changes or voids. Similarly, in 2020 there were 1,151 additions, and 13 changes or voids. All these were updated using Form 8811 as the source.

The true utility of Publication 938 lies in the fact that REMICs and CDO issues are not publicly traded, therefore information about them is not publicly disseminated by a neutral third party such as the SEC. The Introduction to Publication 938 states, "You can use the directory to find the representative of the REMIC or the issuer of the CDO from whom you can request tax information."[114] It suggests requesting information from the representative or issuer by telephone or mail and to specify the calendar quarters and the classes of REMIC regular interests or CDOs for which information is needed. The publication continues by indicating that the representative or issuer must provide the information requested to you by the later of:

- The 30th day after the close of the calendar quarter for which information was requested, or
- The 14th day after the receipt of the request.

The IRS requested the IRSAC's assistance to determine the usefulness and/or relevance of Publication 938 and to offer recommendations on either changing or discontinuing the way the publication is developed going forward. This assessment was requested because during the COVID-19 pandemic, and as a result of building closures and other interruptions of IRS operations handling mail and processing returns, the IRS was only able to issue Publication 938 for

[114] Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs)) (Rev. Aug. 2021), https://www.irs.gov/pub/irs-pdf/p938.pdf.

the 1st quarter of 2020, and later issued a special Publication 938 that combined the 2nd, 3rd and 4th quarters of 2020 with the 1st quarter of 2021. The IRS reported no inquiries, questions, pushbacks or concerns from the industry, taxpayers or anyone else, regarding this delay. Reviewing the statistics on visits to the Publication 938 page within the IRS.gov website, downloads per calendar year decreased from 10,082 in 2019 to 9,526 in 2020 while the total number of Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*, returns continued increasing at a consistent pace, further highlighting that interest in the publication has decreased.

After multiple conversations with the subject matter experts in W&I Tax Forms and Publications, we came to a consensus that the IRS should continue producing Publication 938, perhaps with some improvements. The reasoning for this is:

1. The IRS is required to collect REMIC and CDO issuer information by Treasury Regulation Section 1.6049-7 and must publish this information for public consumption.
2. It is the only source for basic tax information on REMICs and CDOs. We reviewed other paid subscriptions that have some of these details, but they are not available to the public without a charge.
3. Clearly it is useful to a segment of taxpayers and the IRS has designed very precise steps in the regulation for requesting information from the authorized representative or issuer.

The most forward-thinking, yet useful concept discussed was to convert Publication 938 into a user-friendly searchable database. The information available on REMICs and CDO issuers is minimal yet extremely important; therefore, the search feature ideally would contain basic criteria equivalent to that in the publication, with the facility to track the different events in the lifecycle of the REMIC or CDO issue such as:

a. electronic submissions of Form 8811 by a REMIC or CDO issuer (addition, change and deletion),
b. receipt or approval by the IRS, and

c. publication on approval.

This would eliminate the need to wait for a quarterly update and allow the IRS to enhance the directory entry with relevant information for the taxpayer such as a website, a description, or the history of electronic submissions for a REMIC or CDO issue. The IRS has developed an extremely successful tool for searching Tax-Exempt Organizations on IRS.gov and we recommend using this as a blueprint for the REMIC and CDO search feature.

Recommendations

1. Develop Publication 938 as a searchable database with real-time information on REMICs and CDO issuers.
2. Study the possibility of changing the quarterly publication frequency to semiannual or annual, thereby reducing the friction caused by collecting Forms 8811, updating and formatting the publication, as these are very time-consuming tasks that are performed manually.

ISSUE FOUR: Encouraging Taxpayers to Maximize the Use of Electronic Filing of all Tax Returns, Forms, and Payments

Executive Summary

The IRS initially requested the IRSAC to identify ways to expedite processing by maximizing the use of electronic filing[115] of all tax returns, forms and payments programmed for intake using the electronic Modernized e-File (MeF) platform. The pandemic's impact on the 2020 and 2021 filing seasons has highlighted, in retrospect, the continuing exposure of our tax system to paper submissions and the adverse impact of paper processing on tax administration generally and taxpayers specifically.[116]

Based on its further evaluation, the IRSAC expanded its focus to consider how the IRS might maximize the electronic filing or submission of any IRS returns, forms or payments whether or not through MeF. Overall, the IRSAC agrees with the electronic filing recommendations of the IRS Electronic Tax Administration Advisory Committee (ETAAC) in its 2021 Annual Report to Congress (ETAAC 2021 Report).[117] At the highest level, it is time to reset IRS electronic filing targets, prioritize electronic filing initiatives, create a transparent roadmap, and obtain dedicated multi-year funding for this purpose.

Background

RRA 98's 80% Goal for Electronic Filing of Returns Has Been Achieved

Pursuant to Section 2001(a) of the IRS Restructuring and Reform Act of 1998 (RRA 98),[118] Congress established three key policy objectives:

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[115] As noted below, the phrase "electronic filing" is sometimes understood either to be narrowly limited to return filings through MeF or, alternatively, more broadly to relate to any electronic submission of returns and forms to IRS. Unless otherwise noted, the IRSAC is using the phrase broadly to refer to any electronic submissions of returns and forms to IRS whether or not through MeF or any other filing platform such as the Filing Information Returns Electronically (FIRE) system.

[116] *See* A Closer Look: IRS making progress on key areas slowed by the pandemic, but more work remains (Sept. 14, 2021), https://www.irs.gov/pub/irs-utl/operationsstatus.pdf.

[117] *See* ETAAC 2021 Annual Report to Congress, Pub. 3415, Recommendation #5.

[118] Pub. L. 105-206, 112 Stat. 685, 723 (July 22, 1998).

- Paperless filing should be the preferred and most convenient means of filing Federal tax and information returns,
- The IRS should have a goal to have at least 80% of all such returns filed electronically by the year 2007, and
- The IRS should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

In its past reports, ETAAC reviewed the IRS's definition of "major returns" to measure electronic filing progress. Despite slow progress with employment returns, the IRS essentially achieved the 80% target for major returns in 2017.

Unfortunately, at this time, there is little low hanging fruit for the IRS to drive higher electronic filing rates in the remaining 20% of major returns or in non-major forms and returns. Instead, increasing electronic filing of the remaining paper-filed forms and returns will require careful analysis and targeting, diligent planning and focus, and sustained and dedicated funding. Each individual form or return presents unique barriers to electronic filing including form complexity, IRS e-File rules, filer segments (individuals, businesses, employers, etc.), implementation costs, adoption rates, and the relative benefits to tax administration and taxpayers. Simply put, there is no silver bullet.

Despite Progress, Our Tax System Remains Vulnerable to Paper Filings

As noted above, the IRS has made strong progress in the electronic filing of major returns and many other non-major returns and forms. However, COVID-19 profoundly and adversely impacted IRS operations and taxpayers in the 2020 and 2021 filing seasons. In particular, the understandable shutdown of IRS processing centers caused significant backlogs in the processing of paper-filed IRS returns and forms. In its 2021 filing season interim review,[119] the Treasury Inspector General for Tax Administration (TIGTA) reported that:

[119] TIGTA Ref. No. 2021-40-038, Interim Results of the 2021 Filing Season (May 6, 2021, "TIGTA Interim Report"). The Report also describes the IRS's diligent efforts to reduce the paper return backlogs.

- More than 8.3 million individual tax returns and transactions remained to be processed as of the end of Calendar Year 2020—more than a 1,200% increase in the paper-filed returns carryover inventory year-over-year.
- The IRS expected to receive approximately 160.9 million individual income tax returns during 2021—14.4 million filed via paper and 146.6 million electronically filed.

The processing delays of paper filings presents other consequences. In one case, TIGTA reported that electronically filed Tax Year 2020 returns were rejected due to delays in IRS processing of backlogged Tax Year 2019 returns.[120] But processing paper returns is only one element of a bigger challenge facing the IRS. TIGTA also reported IRS backlogs relating to changes associated with the Earned Income Tax Credit and Additional Child Tax Credit, and the correction of returns affected by reduced taxable unemployment compensation.

The cumulative effect of these processing challenges is a delay in delivering vital refunds to taxpayers (especially low-income taxpayers) and creation of unnecessary duplicative work for the IRS triggered, for example, by an increase in amended returns. Significant reductions of paper filings will only occur when Congress and the IRS establish it as a top policy and operational priority.

The IRSAC's Review

The IRSAC took several steps to review the issues in the electronic filing area, including: (i) engaging with IRS MeF experts to understand its current e-File assessment methodology and focus (e.g., Form 1040X) and the role of the MeF Working Group; (ii) reviewing past IRS and third party electronic filing reports such as the 2008 & 2010 IRS Advancing e-File Studies; (iii) reviewing the

[120] TIGTA reviewed two business rules relating to prior year adjusted gross income that taxpayers enter to authenticate their identity when e-filing a tax return, which appeared to trigger the rejection of tax returns. After investigation, IRS reported that, if the Tax Year 2019 return had not posted as of December 10, 2020, the taxpayer's prior year adjusted gross income would not be updated in the e-File database, thereby causing the Tax Year 2020 return to reject.

IRS's 2015-17 e-File Strategies for Growth to increase electronic filing of employment, non-profit and vehicle use tax returns; (iv) reviewing the IRS's FY 2022 Congressional Budget Justification & Annual Performance Report and Plan[121] and the Integrated Modernization Business Plan[122] for electronic filing initiatives; and, (v) discussing the Taxpayer Experience Strategy.

The IRSAC's review resulted in several observations that are the foundation for its recommendations focused principally on process, structure and funding.

The IRSAC's Observations – Electronic Filing

The IRSAC is aware that the IRS's Taxpayer Experience Strategy identifies "Expand e-File Options" as one of the Top 12 Capabilities that will have the highest impact on the taxpayer experience, albeit the capability is currently unfunded.[123] We support that assessment of the impact on taxpayers of electronic filing or submission of IRS forms and returns.

The ETAAC 2021 Report identified several discrete opportunities to increase electronic filing of specific forms or returns. The IRSAC's discussions raised several other discrete opportunities including: (i) simplifying the filing and payment process for small businesses by creating an employer portal where employment tax returns and information returns can be electronically filed and taxes paid all in one location, and (ii) enabling the electronic filing of amended payroll returns, to include all Form 94X series.

However, rather than focus on specific forms or returns, the IRSAC decided to focus its observations on the following higher-level areas.

1. Common Terminology. Currently, a variety of terms or characterizations are associated with the general term "electronic filing":

[121] *See* https://home.treasury.gov/system/files/266/02.-IRS-FY-2022-CJ.pdf.
[122] *See* Pub. 5336 (April 2019), https://www.irs.gov/pub/irs-pdf/p5336.pdf. The IRSAC did not identify specific return or form-specific electronic filing initiatives in the Modernization Plan.
[123] The IRSAC does not know if this capability refers only to electronic filing through MeF, or more broadly to any electronically submitted forms or returns regardless of platform.

- Electronic filing is sometimes used or understood to refer to only the filing of returns through MeF. However, numerous other non-MeF platforms are used to receive electronic tax submissions including FIRE (information returns), the Form 990-N Electronic Notice system (for small exempt organizations), and the Form 5500 (Annual Returns/Reports of Employee Benefit Plan) system operated by the Department of Labor in coordination with the IRS.
- E-signature initiatives also seem related to the broader electronic filing initiatives. For example, Section 2302 of the Taxpayer First Act of 2019 characterizes the electronic submission of Form 2848, *Power of Attorney and Declaration of Representative*, and Form 8821, *Tax Information Authorization*, as standards for the "*acceptance of taxpayer signatures appearing in electronic form*."[124] In effect, the IRS e-Signature effort is another independent platform to drive the electronic submission of IRS forms or returns.
- The IRS's Taxpayer First Act Report to Congress dated January 2021 uses the term "digital filing" to include "Expand e-File options" and "Digital Signatures."[125]

The IRSAC believes this area would benefit from a common understanding that "electronic filing" (or some other collective term) includes all situations in which IRS returns and forms are filed or submitted electronically.

2. Electronic Filing Goal Reset. The IRSAC agrees with ETAAC—it's time to reorient and reenergize the IRS's electronic filing effort by setting a new *long-term* goal for the availability of electronic filing of all IRS forms and returns. This objective is entirely consistent with RRA 98's Congressional

[124] Section 6061(b)(3) is amended to read as follows: *"(B) Electronic signatures for disclosure authorizations to, and other authorizations of, practitioners. Not later than 6 months after the date of the enactment of this subparagraph, the Secretary shall publish guidance to establish uniform standards and procedures for the acceptance of taxpayers' signatures appearing in electronic form with respect to any request for disclosure of a taxpayer's return or return information under Section 6103(c) to a practitioner or any power of attorney granted by a taxpayer to a practitioner."*
[125] *See* Pub. 5426, at 191.

intent that "paperless filing should be the preferred and most convenient means of filing Federal tax and information returns." Expressed another way, why shouldn't all IRS returns and forms be electronically fileable?

3. Transparent Roadmap. The IRS needs a coordinated and transparent long-term roadmap to increase the electronic filing of IRS forms and returns. As precedent, the IRS has done an excellent job providing a detailed, published plan to modernize its IT systems as reflected in the IRS Business Modernization Plan. The IRS now needs a comparable IRS-wide roadmap to identify and prioritize electronic filing initiatives across the IRS. This effort could be enabled by the IRS conducting a "lessons learned" review of vulnerabilities and impacts of paper processing on tax administration based on the 2020 and 2021 filing seasons. Moreover, monitoring and coordinating this effort is a challenging undertaking. The IRSAC believes the transparency and execution of electronic filing initiatives would benefit from having a designated IRS office act as the centralized point to monitor and report on progress regularly.[126]
4. Streamlined Electronic Filing Assessment Process & Stakeholder Engagement. The IRS needs an efficient process to identify, scope and prioritize electronic filing opportunities. Rather than treat each form/return on an individual basis, this process would benefit from having a set of common criteria to enable the rapid assessment, scoping and prioritization of electronic filing initiatives. This process would also benefit from having a regular engagement with key stakeholder communities to leverage their unique insights to help the IRS identify and assess the benefits and costs of electronic filing of any specific IRS forms and returns.[127] The IRS has a

[126] The IRS is in the best position to determine that office, which could include IRS IT or one of the recently formed Taxpayer Experience Office or Enterprise Digitalization and Case Management Office.

[127] One example is Form 8802, *Application for United States Residency Certification*, used by investment companies to request a Form 6166, *Certification of U.S. Tax Residency*, and obtain foreign tax relief. Obtaining a Certification can be delayed by processing of the Form 8802. The cost of lost treaty relief ultimately is borne by the U.S. Treasury to the extent U.S. investors claim foreign tax credits for the foreign tax withheld. Electronic filing of Form 8802 would address many of these issues, accelerate resolution of others, and speed Form 6166 issuance. Perhaps most

history of implementing innovative processes to engage stakeholders to increase electronic filing going back 20 years, including the so-called "Request for Agreement" process.[128]

5. Consistent, Multi-Year Funding. IRS funding of electronic filing initiatives is frequently deprioritized because of legislative changes or mandates that take first priority on funding and resources. To avoid this outcome, the IRS must receive sustained, dedicated and multi-year funding to execute its electronic filing initiatives and deliver a 21st Century experience to taxpayers.[129]

Electronic Payments

The IRSAC notes that the ETAAC 2021 Report included observations relating to Direct Pay, and IRSAC members have also raised other potential payment options. The IRSAC will consider reviewing any payment opportunities in future reports.

Recommendations

1. Develop a common understanding of the terminology used by the IRS relating to *electronic filing and submission*.
2. Set a long-term goal of achieving an electronic filing capability for all IRS forms and returns.

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importantly, electronic filing would prevent human error, such as incorrectly inputting a taxpayer's name onto a Form 6166, from delaying receipt of a valid Form 6166.

[128] IRS leveraged its RRA 98 statutory authorities to create a vehicle commonly referred to as the "Request for Agreements" (RFA). RFA was a non-monetary program where, without any expenditure of procurement funds, IRS sought and received pilot proposals to increase electronic filing. If accepted, IRS would cooperate to enable the submitting organization to implement its pilot, which could include the IRS's granting of incentives. RFAs presented limited risk and cost to IRS and taxpayers. If the proposal worked, IRS made the opportunity more broadly available; if the proposal failed, then IRS dropped it.

[129] The importance of consistent, multi-year funding for the IRS is further addressed in this year's General Report, Issue One: Adequate Funding for the IRS.

3. Develop, publish, monitor and report on a coordinated and transparent roadmap to achieve the capability to electronic file or submit all IRS forms and returns.
4. Design and implement an efficient process to identify, assess, scope, and prioritize electronic filing opportunities on a continuing basis,[130] including regular engagement with relevant external stakeholders.

[130] One illustration of this approach is the framework and methodology that the IRS Identity Assurance and IRS Research, Applied Analytics and Statistics (RAAS) organizations used to prioritize forms for e-signature implementation.

ISSUE FIVE: Improving the Taxpayer Experience with the Taxpayer Digital Communication – Outbound Notification (TDC-ON) Application (Recently Renamed as Digital Notices and Letters (DN&L))

Executive Summary

The Taxpayer Digital Communication – Outbound Notification is a web-based application that allows individual taxpayers access to specific IRS notifications via their Online Account (OLA) Message Center. The application integrates with existing Web Apps OLA and Web Apps Platform infrastructure and leverages the same IRS e-Authentication platform.

Pursuant to The Taxpayer First Act, the IRS is focused on increasing taxpayer adoption of receiving digital notifications through the TDC-ON Message Center, improving taxpayer correspondence, expanding marketing campaign efforts, and providing alerts via Online Account. Since launching the OLA Message Center offering in November 2020, the IRS has strategically expanded the number of Computer Paragraph (CP) notice types from six to eleven; these eleven CP notice types that are digitized represents approximately 53% of the total CP notice volume.[131]

The IRS asked for the IRSAC's assistance in encouraging taxpayers to go paperless, improving the taxpayer experience with reporting errors, increasing the number of taxpayer online accounts, and to increase the number of online account users that choose to opt-out of receiving paper-based correspondence.

Background

Historically, the IRS has relied on the United States Postal Service (USPS) to send paper-based letters and over 200 different types of outbound CP notices to taxpayers that explain the reason for the contact and instructions on how to handle the inquiry or problem. The TDC-ON Message Center was first released to taxpayers in November 2020 and allowed OLA users to navigate to

[131] IRS Information Technology TDC-ON Overview Presentation Deck: Prioritized Notices (Internal IRS document).

their Message Center tab, view a list of select notices they received from the IRS, and access six 508 compliant notices.

The primary challenge the TDC-ON Message Center addressed centered on adhering to Section 508 of the Rehabilitation Act and Section 255 of the Communications Act that focused on the following 508 errors:[132]

1. Misleading Headings / Bookmarks
2. Incorrect Tag / Content Order
3. Overlapping tags
4. Missing tags
5. Missing list tags for list items

The initial TDC-ON Release, which is referred to as TDC-ON Release 1-A, included a subset of notices that were prioritized by the volume of OLA users that receive each of the following CP notices:

1. CP-21A: Recalculation – Balance Due
2. CP-60: We Removed Payments from Your Account – Balance Due
3. CP-14I: Returned Filed – IRA Taxes or Penalties Due
4. CP-521: Monthly Installment Agreement Payment Reminder
5. CP-01A: We assigned You an Identity Protection Personal Identification Number (IP PIN)
6. CP-62: We Credited your Account

By FY 2021 Q3 (June 2021), TDC-ON Release 1-B added the following five additional 508 compliant CP notices:

7. CP-14: Balance Due
8. CP-49: Refund Offset
9. CP-501: Individual Master File (IMF) 1st Notice – Balance Due
10. CP-14H: Owed Minimum Essential Health Coverage Payment (Shared Responsibility Payment)
11. CP-39: Overpaid Taxes Applied – Balance Due

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[132] W&I, Taxpayer Digital Communication (TDC) Outbound Strategy (OS), Environment Scan Executive Summary (Internal IRS document).

From this list of 11 TDC-ON Release 1-A and 1-B CP notices, the IRS issued a total of 50,178,949 notices, of which 22,942,003 of these notices were digitally sent to OLA users.[133] Despite this number of digital notices delivered to OLA users, the data still represents a significant opportunity to increase the overall number of OLA users, especially considering that the IRS processed 136 million individual income tax returns during the 2021 tax filing season.[134] On July 20, 2021, the IRS Governance Board approved the renaming of TDC-ON to Digital Notices and Letters (DN&L).

DN&L Release 2-A is targeted for FY 2022 Q1 (November 2021) and will enable taxpayers to opt-out of select paper-based notices, opt-in to select paper-based notices, sign up for email notifications, and report an error by using a OLA Message Center form.[135] Future DN&L capability releases that are planned, but do not yet have a targeted delivery date, include receiving a SMS notification (i.e., text message) to advise that a new message has been delivered to Notices and Letters, a statutory right voluntary waiver option to receive specific paper-based notices, a read/unread visual indicator of the number of unread messages, a filter and hide/remove notification option, and the ability to set a language preference for notice receipt.

The Taxpayer First Act requires the IRS to develop a comprehensive customer service strategy, known as Taxpayer Experience Strategy; expanding DN&L is specifically identified as a major deliverable under the focus area of "Expand Digital Services". Furthermore, the TDC Outbound Strategy Tactical Roadmap creates a plan to "rapidly expand access to digital notices via the IRS OLA Message Center"; it also includes adding additional channels such as text message and a mobile application.

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[133] IRS Information Technology TDC-ON Overview: Prioritized Notices (Internal IRS document).
[134] https://www.irs.gov/newsroom/national-taxpayer-advocate-assesses-tax-filing-season-and-identifies-areas-for-irs-improvement-in-midyear-report-to-congress
[135] IRS Information Technology TDC-ON Overview: Release 2 Capabilities (Internal IRS document).

In addition to expanding digital services, the Taxpayer Experience Strategy includes a "Proactive Outreach and Education" focus area for which the IRS will invest time, money, and resources in the following areas:[136]

- Correspondence Redesign – enhances taxpayer understanding by refining the content and messaging of select CP notices
- Mobile Features – this will enable users to securely access the Message Center through a mobile application (54% of taxpayers would prefer to access their OLA through a mobile application)[137]
- Paperless Adoption – implements a number of marketing efforts to increase the number of OLA users that choose to opt-out of receiving paper-based notices (the IRS spent $42 million in associated printing and postage costs in 2019)
- Change Management – promotes awareness of OLAs as 64% of taxpayers are unaware that they can create and use an OLA to interact with the IRS
- Expand OLA Access – this focus area will identify ways to increase the percentage of taxpayers who can verify their identity as this remains one of the biggest challenges for taxpayers who seek to create an OLA

The IRSAC supports the DN&L Strategy Roadmap as the planned focus areas are an effective and efficient means to reduce internal costs while simultaneously enhancing the taxpayer experience.

Recommendations

1. Engage the Taxpayer Advocate Office to help promote the creation of an Online Account for taxpayers.
2. Solicit Tax professionals, VITA/TCE, professional and trade associations and other stakeholders to promote awareness of OLA to taxpayers.

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[136] IRS W&I, Taxpayer Digital Communication Outbound Strategy, Tactical Roadmap, Summary of Focus Areas (Internal IRS document).
[137] Derived from an IRS survey of 371 taxpayers living in 40 states who paid taxes in 2019 and 2020. Respondents represented an even distribution across generations, sex, and household income.

3. Simplify the content of the available DN&L so that the average taxpayer can understand what is being communicated, including any actions to be taken.
4. Continue to increase the number of IRS CP notices that are available on the Online Account (OLA) system from the current 11 notices out of the existing 200+ CP (prioritize additional CP notices by the average number of issued notices from the past three years).
5. Pursuant to the Taxpayer Experience objective of expanding OLA access, provide OLA capability to be used by businesses and employers to manage issues for tax forms 1120, 1120-S, 1065, 1042, 1041, 990, 945, 941, and 940.
6. Establish a dedicated team to develop mobile features to work with DN&L capabilities to securely access DN&L through a mobile application.

APPENDIX A:

IRSAC Letter to Commissioner Rettig Dated August 27, 2021

Re: Support for the IRS Fiscal Year 2022 Budget Request

and the IRS Taxpayer First Act Initiatives

Internal Revenue Service Advisory Council

August 27, 2021

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Support for the IRS Fiscal Year 2022 Budget Request and the IRS Taxpayer First Act Initiatives

Dear Commissioner Rettig:

As you know, the Internal Revenue Service Advisory Council ("IRSAC") has thirty-five members who represent a broad cross-section of the taxpaying public and have substantial experience including: tax preparation for individuals, small businesses and/or large, multi-national corporations; information reporting; tax-exempt and government entities; volunteer community tax programs; electronic tax administration and digital services; and professional standards for tax professionals.

We write to you today on behalf of the IRSAC to report its unanimous support of the following key elements of the IRS FY 2022 Budget Request[138]:

- Base appropriations of $13.2 billion to provide funding for the nation's taxpayer services, enforcement and IT modernization programs,
- A program integrity allocation adjustment of $417 million to improve the effectiveness and efficiency of the IRS's tax enforcement program in order to recover taxes owed to the federal government, and
- Authorization of a working capital fund for the IRS's centralized services.

Additionally, there have been various other proposals to provide the IRS with consistent, multi-year funding to improve tax administration. The IRSAC believes that it would be beneficial to taxpayers and overall tax administration if Congress provided additional consistent, multi-year funding to the IRS to build and improve taxpayer services and enforcement and to accelerate modernization in an amount determined to be appropriate through the legislative process. Of course, any incremental investments in IRS enforcement must be accompanied by adequate funding of associated taxpayer services and systems modernization.

[138] Pub. 4450, IRS Congressional Budget Justification & Annual Performance Report and Plan for FY 2022 (Rev. May 2021) ("IRS FY 2022 Budget Request").

Finally, to build public confidence, the IRS must be able to project and, after the fact, clearly demonstrate a "return" on those investments.

Below is a summary of the key reasons we are expressing our support at this time.

The IRS plays a critical role in enabling the federal government and helping taxpayers comply

In FY 2020, the IRS collected $3.5 trillion in taxes (gross receipts before tax refunds) and generated 96 percent of the funding that supports the federal government's operations. In addition to collecting the taxes, one of the IRS's key responsibilities is to make it easier for taxpayers to understand and meet their tax obligations at a time of increasingly complex tax laws and regulations.

An increase in the IRS's base appropriations is reasonable

The years of 2010 – 2020 were a time of reduced funding for the IRS, which adversely affected both taxpayer services and tax enforcement. Fortunately, Congress has recognized this situation and increased IRS appropriations during the past two budget cycles.

The IRS's FY 2022 request is $13.2 billion, which is a ten percent increase over the FY 2021 operating level. The IRSAC believes this request will assist the IRS in its crucial mission to effectively and efficiently collect tax revenue, which will benefit the public. This funding level would enable the IRS to invest and deploy additional resources to improve revenue collection through improved enforcement. The IRS estimates that it has an overall return on investment (ROI) of about $5 for every $1 invested, excluding significant deterrence effects. The IRSAC also believes that this request supports improved taxpayer service and fair and equitable tax administration for all Americans.

Expectations for our system of tax administration and the IRS continue to increase

Congress has outlined heightened expectations for the IRS in the Taxpayer First Act (TFA) passed in 2019, including a reimagined taxpayer experience, enhanced employee training and a redesigned organizational structure to increase collaboration and innovation.

Moreover, since the passage of the TFA, Congress has continued to expand the scope of the IRS's role beyond tax assessment and collection to (i) include the delivery of expanded social benefits in the form of refundable credits, and (ii) leverage the IRS's capabilities to deliver targeted relief in response to national

economic emergencies, such as the delivery of Economic Impact Payments and support for small businesses during the COVID-19 pandemic.

These types of increased expectations require that the IRS develop and operate a modern and flexible tax administration system.

Increased expectations for the IRS warrant sustained, consistent, multi-year funding

The IRS is at an inflection point. The nation's expectations for the IRS cannot be met without a significant investment in IRS staffing and training, and a secure, flexible and modern technology infrastructure. Fully funding the IRS's FY 2022 Budget Request is a first step in the right direction. The second step would be to provide the IRS with more consistent, multi-year funding to enable it to modernize and to enforce our tax laws.

We would be happy to discuss these matters with you or your staff.

Best regards,

Ben Deneka, Chair

Carol Lew, Vice Chair

APPENDIX B: IRSAC Member Biographies

*Indicates New Member

W. Edward "Ted" Afield – Professor Afield is the Mark and Evelyn Trammell Clinical Professor and Director of the Philip C. Cook Low-Income Taxpayer Clinic at Georgia State University College of Law, one of the largest academic low-income taxpayer clinics in the country. Professor Afield's research focuses on a range of tax procedure issues relating to tax compliance and professional regulation, state and federal tax issues that impact educational policy, as well as more practice focused doctrinal research into tax procedure for the practicing bar and, in particular, for the community of low-income taxpayer clinics. Professor Afield is a member of the American Bar Association, the Association of American Law Schools, and the National Tax Association. He is also a fellow in the American College of Tax Counsel. He holds a J.D. from Columbia Law School, an LL.M. (taxation) from the University of Florida Levin College of Law, and an A.B. in history, cum laude, from Harvard College. **(Small Business/Self-Employed Subgroup)**

Martin Armstrong – Mr. Armstrong is VP of Payroll Shared Services for Charter Communications, a Fortune 100 company and the second largest cable operator in the United States. He has held executive roles with Time Warner Cable and Caesars Entertainment, is a retired Navy Supply Corps officer, and is currently the Accounting & Finance Area Chair for the University of Phoenix, where he was named the 2018 Distinguished Faculty of the Year. Armstrong is a former Vice President, Board of Advisor, and current member for the American Payroll Association, the Society for Human Resource Management, the National Association of Tax Professionals, the American Society for Quality, and the Academy of Management. Armstrong is also an Advisory Board member for the Bloomberg Tax Payroll Administration Library and the Workforce Institute, is a Certified Payroll Professional (CPP), and holds a MBA degree from the University of Maryland University College (UMUC), and a Doctor of Business Administration (DBA) degree from Argosy University. Dr. Armstrong has written for, or been covered by, the APA's PAYTECH magazine, the Bloomberg Tax Payroll Administration Guide, Human Resource Executive, The Paycard Advisor, Accountant's World, The Institute of Management & Administration, Training Magazine, and Business Finance. **(Chair, Wage & Investment Subgroup)**

Sharon Brown – Ms. Brown is a Partner at Barclay Damon LLP, where she is the cochair of the Public Finance Practice Area and a member of the Tax Practice Area and the tax credits team. She primarily concentrates her legal practice on the federal tax treatment of tax-exempt bond financings and serves as bond counsel, underwriters' counsel, and special-tax counsel. Ms. Brown also routinely handles a wide variety of public finance transactions, including multifamily and single-family housing, power and energy, and 501(c)(3) financings. She has been named to Law360's Influential Women in Tax Law list, and she received the Trailblazing Women in Public Finance Award from The Bond Buyer in 2018. In addition to her role at Barclay Damon, Ms. Brown is a

federal income tax adjunct at New York Law School. She is a member of the National Association of Bond Lawyers, the New York State Association for Affordable Housing, the New York State Government Finance Officers Association, and the Municipal Forum of New York. **(Tax Exempt & Government Entities Subgroup)**

***Jeremiah Coder** – Mr. Coder has 15 years of technical tax expertise focused on domestic, international and state tax policy issues spanning different industries, client types, issues and countries. He provides policy and technical advice regarding international, U.S., and Organization for Economic Cooperation and Development (OECD) tax developments, including digital taxation and information reporting programs like the Common Reporting Standard/Foreign Account Tax Compliance Act, Country-by-Country Reporting, International Compliance Assurance Program, and other international initiatives dealing with the supply of information to tax authorities. He previously served as a tax policy adviser to the OECD and has had various roles in private practice and as a contributing editor for Tax Analysts. Mr. Coder is a member of the American Bar Association, Federal Bar Association, and International Fiscal Association. **(Large Business & International Subgroup)**

***Sam Cohen** – Mr. Cohen is Government Affairs/Legal Officer with the Santa Ynez Band of Chumash Mission Indians, a federally recognized Indian tribe. He advises the tribe and its members on the application of federal, state and tribal laws. He has worked with the IRS Indian Tribal Governments Office on a notice for draw-down loans and a notice for refunding tribal government bonds. Mr. Cohen has also worked on a $93 million Tribal Economic Development Bond (TEDB) issuance for a new hotel tower and parking garage. He is a member of the General Welfare Exclusion Subcommittee of the Treasury Tribal Advisory Committee. **(Tax Exempt & Government Entities Subgroup)**

Alexandra Cruz – Ms. Cruz is a Vice President with the Bank of New York Mellon's Corporate Tax group, where she manages the Tax Compliance and Quality Assurance team. She was previously a Senior Manager with EY, where she advised and assisted clients in the Wealth and Asset Management industry in matters related to FATCA and CRS across organizations inclusive of tax, investor relations and compliance. Ms. Cruz has extensive experience working with large asset management and banking organizations with both domestic reporting and withholding issues (i.e., Forms 1099 and backup withholding) and nonresident alien reporting and withholding issues (i.e., Forms 1042-S and section 1441 withholding). Prior to joining IRSAC, Ms. Cruz was a member of the IRS Information Reporting Program Advisory Committee (IRPAC) in 2018. She is an attorney and is admitted to the bar in the state of New York. **(Chair, Information Reporting Subgroup)**

Ben Deneka – Mr. Deneka serves as a program manager with The Tax Institute at H&R Block. In addition to managing H&R Block's relationship with the IRS, Mr. Deneka represents H&R Block in the Security Summit and various industry

working groups, including CERCA. He has over 8 years of experience providing expertise on IRS administration and informing his business partners on how to effectively implement standards and practices into H&R Block's scaled tax preparation operation, which includes over 10,000 U.S. tax offices and a robust suite of do-it-yourself tax products. Mr. Deneka earned his B.A. from the University of Mississippi and J.D. from the University of Mississippi School of Law. He currently resides in Dallas, TX. **(IRSAC Chair and Wage & Investment Subgroup)**

Deborah Fox – Ms. Fox is a Certified Scrum Product Owner (CSPO) in Boca Raton, FL, with experience in a broad spectrum of verticals. As the Director of Marketing she is responsible for developing future strategy for tax solutions portfolio. She has a broad background in all aspects of product management, including business case development, project management, partner management, development, operations, client services, systems analysis, sales and quality assurance. Ms. Fox is a self-starter with team building and leadership skills, as well as a strategic thinker with market analysis skills. She is currently pursuing her EA designation. **(Information Reporting Subgroup)**

April Goff – Ms. Goff is a Partner with the law firm Perkins Coie LLP in Dallas, TX. Previous roles included acting as sole in-house ERISA counsel for J. C. Penney Corporation, Inc. and in private practice with Holland & Knight LLP, Sonnenschein Nath & Rosenthal LLP (now Dentons LLP), Seyfarth Shaw LLP, and Warner Norcross & Judd LLP, where she assisted clients ranging from small employers to Fortune 50 companies on complex employee benefit plans, cybersecurity and data privacy issues, and strategic labor and employment issues. Ms. Goff held multiple leadership roles within the American Bar Association and positions at the local and national level with the Association of Corporate Counsel. Ms. Goff is CIPP/US certified and a frequent speaker and author on a variety of ERISA, Labor & Employment, and Cybersecurity and Data Privacy topics. She completed her B.B.A. in Financial Institution Management and a minor in Economics from Tarleton State University at age 18, and Ms. Goff went on to obtain an M.B.A. with an emphasis in Global Finance from Baylor University and a J.D. from St. Thomas University School of Law. **(Chair, Tax Exempt & Government Entities Subgroup)**

Antonio Gonzalez – Mr. Gonzalez is a CPA and Founder and Co-Owner of Sydel Corporation in Coral Gables, FL, an accounting and information technology consulting firm specializing in the financial services industry. He designs and develops multilingual applications to assist financial institutions manage both operations and compliance functions. Sydel's flagship product CompliXpert includes a taxation module for FATCA, CRS and 1042-S reporting in addition to proactive, alert-based activity monitoring and watch list name checking technologies leveraged by both domestic and international financial institutions. Mr. Gonzalez earned a B.B.A. degree in Accounting from the University of Wisconsin-Madison and a M.S. in Accounting (specialization in Accounting

Information Systems) from Florida International University. **(Wage & Investment Subgroup)**

Robert Howren – Mr. Howren has 34 years of tax experience all in the Atlanta, Georgia area. He recently became VP of Tax for Aveanna Healthcare, a national leader in diversified homecare. Prior to that, he spent almost 17 years as Head of Tax for BlueLinx Corporation, one of the nation's largest building products distributors. At BlueLinx, Mr. Howren brought all areas of the tax function in house including income, financial provision, sales & use, property and fuel. In addition, he oversaw the tax due diligence for BlueLinx's acquisition of Cedar Creek in 2018. Mr. Howren has also created the in-house tax function at three other corporations during his corporate career. At the various companies, he has dealt with both inbound and outbound tax issues including transfer pricing issues. The first 10 years of his career was in public accounting. He started his career at Price Waterhouse before moving to a local CPA firm. Mr. Howren is a past international president of the Tax Executives Institute, where he has been a member for over 23 years. As President and a member of the Executive Committee of TEI, he has led and participated in numerous Internal Revenue Service and Treasury Liaison meetings. He is a long-time member of both the Georgia Society of CPAs and the AICPA. Mr. Howren holds a B.S. (Accounting) from Berry College and his MAcc (Tax and Auditing Systems) from the University of Georgia. He has served as President and a Member of the Board of Directors for many years for the Empty Stocking Fund. He is also an Eagle Scout. **(Large Business and International Subgroup)**

Denise Jackson – Ms. Jackson is Vice President of Tax Preparer Development for the North Carolina State Employees' Credit Union. She supervises and coordinates the training program for over 3,000 tax preparers for the credit union's 267 branches across North Carolina. She is an Enrolled Agent and CFP practitioner and holds a Bachelor of Science from Wingate University in Business and Mathematics. **(Wage & Investment Subgroup)**

***Jodi Kessler** -- Ms. Kessler is Assistant Director Tax at MIT. Ms. Kessler has 13 years of experience in higher education focusing on all aspects of taxation, including federal, state, local and international filing rules and requirements; gifts to and from a university; rules on withholding and reporting of all types of payments made by a university; and providing information on entity creation and dissolution. She has collaborated successfully with several departments to advise on tax rules and informational reporting at universities including The Ohio State University and Harvard University. At the Massachusetts Institute of Technology (MIT), she analyzed reporting and developed improved processes for reporting payments including employee compensation, service and non-service scholarships and fellowships, independent contractors and foreign recipients; she has developed trainings on the tax implications and reporting requirements of payments MIT issues to both U.S. tax residents and nonresidents. Ms. Kessler is a member of the National Association of College &

University Business Officers (NACUBO). **(Tax Exempt & Government Entities Subgroup)**

***Steven Klitzner** – Mr. Klitzner, an Attorney, has more than 20 years of experience representing taxpayers before the IRS. He devotes 100% of his law practice to tax resolution and controversy work. He is admitted to the U.S. Supreme Court, U.S. District Court Southern District of Florida, and U.S. Tax Court. Mr. Klitzner has had multiple speaking engagements with the American Society of Tax Problem Solvers and teaches continuing education courses to CPAs, EAs, and attorneys around the country. Mr. Klitzner is a member of the Florida Bar Tax Section, American Society of Tax Problem Solvers, Advisory Board of the Tax Freedom Institute, South Florida Tax Litigation Association, and Florida Lawyers Network. **(Small Business/Self-Employed Subgroup)**

Kathleen Lach – Ms. Lach is a Partner resident in Saul Ewing Arnstein & Lehr's Chicago office. She represents clients before a variety of different tax authorities, including the Internal Revenue Service, the Illinois Department of Revenue, and the Illinois Department of Employment Security. Ms. Lach represents both businesses and individuals in income tax, sales tax, and penalty controversies, and in IRS audits and liability settlement negotiations. She has represented a number of individuals before the IRS on innocent spouse claims and in offshore voluntary disclosure cases. Ms. Lach has had cases pending before the U.S. Tax Court, U.S. District Court, and before IRS and state administrative agencies. **(Small Business/Self-Employed Subgroup)**

Carol Lew – Carol Lew is a shareholder of Stradling, Yocca, Carlson & Rauth in Newport Beach, CA. She has over 32 years as a tax lawyer with substantial experience with TEB audits and TEB VCAP cases. She served as president of the National Association of Bond Lawyers from 2006-2007, and she served as chair of the ABA Tax-Exempt Financing Committee from 2001-2003. She has experience as bond counsel, underwriter's counsel, special tax counsel and borrower's counsel for various kinds of bond issues for state and local government and non-profits for the provision of public infrastructure, housing, charter schools, performing arts facilities, hospitals, museums and other types of facilities. She served as editor-in-chief of the Federal Taxation of Municipal Bonds from 2000-2001. **(IRSAC Vice Chair, Tax Exempt & Government Entities Subgroup)**

Kelly Myers – Mr. Myers is a tax consultant with Myers Consulting Group, LLC, based in Huntsville, Alabama. Mr. Myers primarily provides seminars, tax planning, consulting, and controversy services to clients across the United States which include individuals and large to small accounting firms. He spent 30+ years with the Internal Revenue Service (retired 2017) with the last 20 years working for the Washington, DC, Headquarters as a Senior Technical Advisor. His IRS experience included official guidance projects, examiner and litigation technical support, and implementing new legislation. He leverages his decades of IRS and public accounting experience to strategically add value to a varied client base.

He has developed efficient tax strategies in both preparation and controversy arenas. He has been a guest speaker for numerous CPA and EA continuing education events, IRS Nationwide Tax Forums, national tax associations, and others in both live settings and webinars. Mr. Myers serves on the Federal Tax Committee for the National Society of Accountants (NSA). He has an MBA from the University of Tampa with emphasis in Accounting and Taxation. His BA is from Western Colorado University (f/k/a Western State College) with a double major in Accounting and Business Administration and a minor in Economics. **(Small Business/Self-Employed Subgroup)**

Joseph Novak – Mr. Novak is Abbott's Vice President, Taxes. He was appointed to this role in June 2017. Previously, Mr. Novak had served in Abbott's corporate tax organization since 2004, in a variety of roles, including leadership positions in the income tax accounting, transfer pricing, M&A, planning and compliance groups. Prior to joining Abbott, he worked for Deloitte. Mr. Novak earned his B.S. in Accountancy from the University of Illinois, Champaign-Urbana. **(Chair, Large Business and International Subgroup)**

Robert "Bob" E. Panoff – Mr. Panoff is a certified tax attorney. He is a Fellow of the American College of Tax Counsel. He specializes in representing individual and entity taxpayers in civil and criminal tax litigation at all levels of the IRS and in court. He was an adjunct Professor at the University of Miami School of Law in this subject matter from 1981 through 2006. He is a past chair of both The Tax Section and the CLE Committee of the Florida Bar and is currently a member of the Tax Section's Executive Council and Long Range Planning Committee. He is a member and past President of the Greater Miami Tax Institute, a member of the Miami International Tax Group, and a member of the South Florida Tax Litigation Association. In 2006, Mr. Panoff received the Tax Section's Gerald T. Hart Outstanding Tax Attorney of the Year Award. He was previously a member of IRSAC from 2005 through 2007 and he was Chair of the IRS South Florida District Compliance Plan Study Group under then District Director Bruce Thomas from 1996 through 2000. Mr. Panoff was an invitee to the Judicial Conference of the United States Tax Court in 1999, 2003, 2005, 2007, 2009, 2015 and 2018. He is one of a small number of tax litigators who have successfully invalidated a tax regulation. See Durbin Paper Stock Co. V. Commissioner, 80 T.C. 252 where two DISC regulations were invalidated. He is also the only tax litigator ever to obtain attorney's fees against the Florida Department of Revenue in a corporate income tax case. **(Chair, Small Business/Self-Employed Subgroup)**

***T. Charles Parr III** – Mr. Parr is a Partner with ABIP CPAs & Advisors. Mr. Parr has over 40 years of diversified tax and audit experience with small to large publicly and privately held companies, both in private practice and with two Big-Four Firms; merger and acquisition representation, due diligence review, feasibility studies, financing and tax consultation; litigation support in bankruptcy and non-bankruptcy proceedings on corporate reorganizations and other technical tax testimony; medium to large corporate bankruptcy "turnaround" reorganization planning, business management consultation, and related tax

compliance; planning, supervision of information gathering, and technical review for compliance and information reporting of U.S. based multi-nationals and non-U.S. multinationals operating within the U.S.; feasibility study, implementation and ongoing compliance filings for large and small Foreign Sales Corporations and Interest Charge – DISCS; domestic and foreign large-case corporate IRS examination representation and coordination with legal counsel in provision of information, technical research and expert witness testimony. Mr. Parr is a member of American Institute of Certified Public Accountants (AICPA) and the Texas Society of CPAs. **(Large Business and International Subgroup)**

***Phillip Poirier** – Mr. Poirier is a Senior Fellow with the Social Policy Institute at Washington University in St. Louis. His work focuses on investigating ways to leverage our system of tax administration to improve the financial lives of low- and moderate-income Americans and active duty military service members. He has experience as a VITA tax preparer and has worked with national organizations on VITA program issues including volunteer management, virtual tax services and cybersecurity. After a private legal practice advising technology companies, Mr. Poirier worked with Intuit Inc. in legal, regulatory, business development and compliance positions. He has an extensive background in tax, electronic tax administration, personal finance, consumer and professional online and mobile offerings, and regulatory/policy issues in the digital economy. Mr. Poirier served in the U.S. Navy and Naval Reserve for nearly three decades, retiring as a Captain. He is former chair of the IRS Electronic Tax Administration Advisory Committee, and a member of the Taxpayer Opportunity Network. He holds a J.D. from the University of San Diego School of Law, and a B.S. in International Security Affairs from the U.S. Naval Academy. **(Wage & Investment Subgroup)**

***Seth Poloner** – Mr. Poloner is Executive Director/Global Head of the Operational Tax Advisory Group at Morgan Stanley. Mr. Poloner has 17 years of experience as a tax attorney at both a large international law firm and a major global financial services firm. In his current role, he leads a team of tax attorneys and professionals responsible for legal interpretation, advice and risk management related to global operational taxes. He provides advice on all aspects of U.S. information reporting and withholding, including non-resident alien and backup withholding; Forms 1042-S and 1099 reporting, including cost basis; validation of Forms W-9 and W-8; and the Foreign Account Tax Compliance Act (FATCA), Qualified Intermediary and Qualified Derivatives Dealer regimes. Mr. Poloner also provides business unit advisory support for the firm's retail wealth management and stock plan businesses, including advising with respect to new products and transactions, addressing client inquiries and drafting and updating tax-related policies and communications. Mr. Poloner is a member of the Securities Industry and Financial Markets Association (SIFMA) Tax Compliance Committee. **(Information Reporting Subgroup)**

***Dawn Rhea** – Ms. Rhea is Chief Legal Officer with Aureus Finance Group, LLC and Hampstead Ventures, Inc. Ms. Rhea's practice area focuses on complex

legal and tax issues arising in the context of B2B lending, financing, asset and equity acquisitions and mergers. She was previously a National Tax Director with Moss Adams LLP where her practice focused on tax controversy and the complex tax issues arising in the context of mergers and acquisitions. She worked with middle market taxpayers, largely comprised of West Coast-based C corporations, S Corporations, and partnerships, including many Silicon Valley-based high-tech companies, as well as the shareholders, partners, and individual owners of such entities in sales to private equity, assets/equity sales to strategic investors; privately owned foreign companies in venture capital financing. She was a leader in the firm's tax controversy and strategic planning, transaction cost and 280G practices. Ms. Rhea is a member of the California Bar, the New York Bar, the American Bar Association and the Society of Louisiana CPAs. **(Large Business & International Subgroup)**

Martin Rule – Mr. Rule is a Senior Manager at EY with over 25 years of experience as a tax and accounting professional. He is a subject matter professional in both tax management and payroll processing with a range of knowledge stemming from employment with public accounting firms, academic institutions, and healthcare institutions. Throughout his career, he has engaged in improving and developing electronic systems and tools for managing federal, state and local employment tax and information reporting. Key to his success is his passion for training others. He was also a part-time lead tax instructor at DePaul University, where he developed and presented lectures for the individual income tax module of the school's Certificate of Financial Planning Program. Mr. Rule earned his B.S. in Accounting from Northeastern Illinois University and his M.S. in Taxation from Northern Illinois University. **(Wage & Investment Subgroup)**

Nancy Ruoff – Ms. Ruoff is the Deputy Director of the Office of Accounts and Reports which maintains responsibility for centralized statewide payroll and accounting systems, processing, and reporting for all state agencies, including the Executive, Legislative, and Judicial branches of government and seven higher education regent institutions. In addition, she manages the Internal Control and Compliance Team and the Kansas Setoff and Kansas Treasury Offset Programs. Ms. Ruoff has over 30 years of experience in all aspects of payroll including management of integrated payroll and accounting business applications and upgrades, analysis and application of Federal State and Local regulations, and identification and implementation of system enhancements and efficiencies. Ms. Ruoff is a CPA and an active participant in various industry groups. **(Tax Exempt & Government Entities Subgroup)**

***Paul Sterbenz** -- Mr. Sterbenz is Director of Information Reporting with Fifth Third Bank. Mr. Sterbenz has 25 years of experience performing information reporting and withholding in the financial services industry. He manages consultation and support to areas of the bank responsible for the production and filing of information reports (including Forms 1099 series, 1042-S, etc.) and the production and filing of annual withholding tax returns (including Forms 945 and

1042). Mr. Sterbenz is responsible for managing the bank's Foreign Bank and Financial Account Report (FBAR) filings and manages the bank's relationship with IRS and other tax authorities with respect to audits and process issues including the corporation's response to penalty and B notices. He monitors regulatory and legislative developments and advises management on the potential tax implications of new legislation, regulations and rulings. Mr. Sterbenz is a member of the American Banking Association's Information Reporting Advisory Group (IRAG) and was the moderator of the 2019 Tax Reporting & Withholding Conference held in Washington, D.C. Mr. Sterbenz is a member of the American Bankers Association. **(Information Reporting Subgroup)**

Katie Sunderland – Ms. Sunderland is Assistant General Counsel, Tax Law for the Investment Company Institute (ICI), the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. She has experience with a broad range of tax issues that impact the investment fund community, including managers, investment funds, and investors. At ICI, she primarily works on global tax issues affecting both U.S. and non-U.S. regulated funds, such as treaty entitlement and EU matters (e.g., public country-by-country reporting). She is also involved in Business at OECD's Business Advisory Group to the Organisation for Economic Co-operation and Development's (OECD's) projects on the Common Reporting Standard (CRS), Tax Relief and Compliance Enhancement (TRACE), and the Digital Economy. Prior to joining the ICI, Ms. Sunderland worked extensively with private funds (i.e., hedge funds and private equity) and sovereign wealth clients as an associate with large international law firms. **(Large Business and International Subgroup)**

Kathryn Tracy – Ms. Tracy is Managing Partner with Kat & Bud Enterprises LLC. Ms. Tracy has owned and operated an accounting and income tax firm since 1992. Her accounting practice offers full-service electronic bookkeeping, accounting and tax preparation services. She prepares over 1,600 returns annually for individuals, corporations, partnerships, non-profit organizations, and estates and trusts. She also prepares information reporting returns. Ms. Tracy is a former IRS Revenue Agent (1987- 1992) with individual and business audit experience, including payroll returns. She played an active part in the fraud-non-filer group researching complex tax law issues. Ms. Tracy works with the IRS local Taxpayer Advocate Service office and speaks to various professional groups throughout Arizona. She has been a VITA volunteer and instructor for 32 years and served on team that wrote the 2019 and 2020 Form 6744 VITA/TCE Volunteer Assistor's Test/Retest. Ms. Tracy is a member of the National Association of Enrolled Agents (NAEA). **(Wage & Investment Subgroup)**

Kevin Valuet – Mr. Valuet is Director of Payroll for IPS Enterprises. He has more than 10 years of payroll experience in financial, educational, and supply chain industries. He is the current President of the Northstar Chapter of the American Payroll Association (Minnesota). Mr. Valuet is an active member of the payroll

community and volunteers on the Government Relations Task Force, Strategic Payroll Leadership Task Force, and Certification Item Development Task Force with the American Payroll Association. He holds a bachelor's degree in accounting from Baker College in Flint, Michigan. **(Information Reporting Subgroup)**

***Wendy Walker** – Ms. Walker is Solution Principal with Sovos, a global tax software company. She helps ensure customers (including financial institutions and insurers, multinational corporations, cryptocurrency exchanges, gig platforms and more) remain compliant with their obligations. A respected industry voice, Ms. Walker appears regularly in business and industry publications such as Law360, CPA Practice Advisor and Cointelegraph. She previously worked at J.P. Morgan Chase, where she led the team responsible for the implementation of operational policies and processes for Forms W-8 collection and validation in corporate procurement, and where she was responsible for information reporting of mortgage servicing and default related transactions, as well as oversight of the production and filing of more than 12 million Forms 1098, 1099-INT, 1099- A, 1099-C, 1042-S, and 1099-MISC annually. Ms. Walker is a member of the Chamber of Digital Commerce, Council for Electronic Revenue Communication Advancement (CERCA), and National Association of Computerized Tax Processors (NACTP). **(Information Reporting Subgroup)**

***Katrina Welch** – Ms. Welch has over 25 years of tax, management, and strategic decision-making experience. Recently, she joined Gordon Food Service, the largest family-operated broadline food distribution company in North America; she leads a team of tax professionals with strategic and operational responsibility for planning, tax provision, compliance and controversy, as well as mergers and acquisitions. Previously, Ms. Welch was the leader of global tax function at Texas Instruments. She also served as the Tax Executives Institute (TEI) 2019-2020 International President and has been a TEI member for over 20 years, with prior service as TEI Senior Vice President, a member of TEI's Executive Committee and on the TEI Board of Directors. **(Large Business and International Subgroup)**

Daniel Welytok – Mr. Welytok has over 30 years of experience as an attorney. He is currently a shareholder in Von Briesen & Roper, S.C., in Milwaukee, WI, where he serves as chair of the Opinion Review Committee reviewing and analyzing numerous opinions on taxable and tax-exempt bond issues, many involving the State of Wisconsin Public Finance Authority. He practices primarily in the areas of taxation, exempt organizations, employee benefits and business law. He also provides a broad range of representation, advising clients on various aspects of nonprofit organization and planning, 501(c) operational issues and compensation practices, income reporting and recognition issues. He represents clients before the DOL, the IRS and state departments of revenue in obtaining and maintaining tax-exempt and nonprofit status, as well as audits and tax controversies. **(Tax Exempt & Government Entities Subgroup)**

Mary Jo Werner, CPA, CFF, JD – Ms. Werner is a partner in Wipfli's tax services and valuation, forensics and litigation services groups. She specializes in litigation support for law firms and assists in fraud and forensic investigations. She is certified in financial forensics by the AICPA. She prides herself on establishing long-term, solid relationships with her clients and works very hard to help them achieve their goals. Ms. Werner's professional memberships and activities include AICPA, American Bar Association, WICPA and Wisconsin Bar Association. She currently serves on the Wisconsin State Bar Tax Board of Directors and is a past member of the IRS Taxpayer Advocacy Panel. **(Small Business/Self-Employed Subgroup)**

Charles Yovino – Mr. Yovino is currently President of Global HR GRC in Atlanta, GA and provides litigation support on retirement plan cases and also writes about HR governance, risk management and compliance. Prior to that he spent 28 years at PricewaterhouseCoopers and was head of the Atlanta HR consulting practice and a national leader of the HR tax, accounting and regulatory practice. He spent the first six years of his career working at a Washington, DC law firm and then for the IRS in Employee Plans Technical. He has worked in all aspects of benefits, including plan design, plan compliance, determination letter requests, VCP applications and working with clients on IRS audits. **(Tax Exempt & Government Entities Subgroup)**