Report

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Annual Report

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NOVEMBER 20, 2013

GENERAL REPORT

OF THE

INTERNAL REVENUE SERVICE ADVISORY COUNCIL

The Internal Revenue Service Advisory Council (the "IRSAC"), the successor to the Commissioner's Advisory Group established in 1953, serves as an advisory body to the Commissioner of Internal Revenue. The purpose of the IRSAC is to provide an organized public forum for Internal Revenue Service (the "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 IRSAC has 24 members with substantial, disparate experience and diverse backgrounds. Members include educators, and tax professionals including accountants, certified public accountants, attorneys and enrolled agents. Many provide tax advice to clients, while others guide their large employer with respect to tax issues. Many are active in the volunteer income tax community. In addition to representing different sized organizations, industries and geographic regions of the United States, members also represent several occupations that interact with the IRS and the tax community in a variety of ways. Each member has a unique tax policy perspective and is committed to providing meaningful input and feedback to the IRS.

The IRSAC is organized into four subgroups - the Wage and Investment (W&I) Subgroup, the Small Business/Self-Employed (SB/SE) Subgroup, the Large Business and International (LB&I) Subgroup, and the Office of Professional Responsibility (OPR) Subgroup. The members recognize the invaluable assistance, dedication and support provided by personnel from the IRS Office of National Public Liaison (NPL) and the operating divisions - Candice Cromling, Director, NPL; Carl Medley, Chief, Liaison Advisory Groups, NPL; Lorenza Wilds, IRSAC Program Manager, NPL; Rose J. Smith, NPL; Anna Millikan, NPL; Maria Jaramillo, NPL; Brian Ward, NPL; Johnnie Beale, W&I; Tonjua Menefee, SB/SE; and Kate Gregg, LB&I. The IRSAC appreciates the invaluable assistance provided by the IRS executives and support personnel throughout the year. We thank them for the discussions and dialogue that each subgroup held on current and emerging tax policy and procedural issues. The IRSAC members were honored and privileged for the opportunity to be able to work with each of these truly remarkable individuals! Their dedicated service to the IRSAC and IRS should be recognized as truly exemplary.

Issues selected for inclusion in the annual report represent those to which IRSAC members have devoted particular attention during four working sessions and numerous conference calls throughout the year. The issues included in the IRSAC annual report are issues that members consider especially important and include issues that IRS personnel brought to our attention. Nearly all issues involved extensive research efforts.

We acknowledge the many challenges that the IRS has recently experienced and, knowing the demands of the IRS executives and operating division representatives, we sincerely appreciate the time and effort extended to the IRSAC during the year.

The 2013 W&I Subgroup, chaired by Andre' Re, prepared the attached report that provides recommendations for reducing processing time for the Form 2848, Power of Attorney and Declaration of Representative, modifying the Transcript Request Policy, enhancing the Practitioner Priority Service Toll Free Line and assisting tax preparers who are victims of identity theft.

The 2013 LB&I Subgroup, chaired by Janice Lucchesi prepared the attached report which provides recommendations for risk assessing large employers to assist in the audit process; revising the Schedule M-3, Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 million or More to increase its usefulness; and increasing IRS understanding of industry issues by suggesting ways to enhance LB&I industry specialization.

The 2013 SB/SE Subgroup, chaired by Cecily Welch, prepared the attached report that reviews and provides strategies to increase the use of on-line payment agreements, modifications to Notice CP2030 and strategies to more fully utilize technology for stakeholder outreach.

The 2013 OPR Subgroup, chaired by Charles J. Muller, prepared the attached report that provides recommendations for guidance to practitioners regarding professional obligations and for changing the Circular 230 rules regarding enrollment of former IRS employees and the contingent fee rule.

The following two discussion points were not assigned to a specific IRSAC subgroup but are being presented due to their importance throughout our system of tax administration.

ISSUE ONE: THE IRS NEEDS SUFFICIENT FUNDING TO OPERATE EFFICIENTLY, PROVIDE TIMELY AND USEFUL GUIDANCE TO TAXPAYERS AND ENFORCE CURRENT LAW, SO THAT RESPECT FOR OUR VOLUNTARY TAX SYSTEM IS MAINTAINED

Executive Summary

The IRS accomplishes its mission by issuing clear, concise tax law guidance, providing assistance to taxpayers, enforcing current tax law, and collecting taxes used by the U.S. government. Reducing the IRS's budget constrains IRS effectiveness and efficiency, which results in taxpayers' loss of respect for the agency and our voluntary tax system. IRSAC is very concerned that prior year and proposed budget cutbacks have so diminished IRS effectiveness that most taxpayers are now experiencing increased compliance costs. This undermines the voluntary tax system, reduces government revenues and promotes the underground economy. The IRS must be provided sufficient resources to continue to operate as a world-class financial institution while maintaining the integrity of our voluntary tax system.

Background

The IRS fiscal situation has remained relatively constant for the past 4 years:

Budget Data and Trends: Dollars by Appropriation Account, Fiscal Years 2010 through 2014

Appropriation account	FY 2010 enacted	FY 2011 enacted	FY 2012 enacted	FY 2013 annualized continuing resolution[a]	FY 2014 requested	Dollar change FY 2012 enacted compared to FY 2014 requested	Percent change FY 2012 enacted compared to FY 2014 requested
Enforcement	$5,504	$5,493	$5,299	$5,331	$5,667	$367	7%
Operations support	4,084	4,057	3,947	3,971	4,481	533	14%
Taxpayer services	2,279	2,293	2,240	2,254	2,413	173	8%
Business Systems Modernization (BSM)	264	263	330	332	301	-29	-9%
Health Insurance Tax Credit Administration (HITCA)[b]	16	15	-- [b]	-- [b]	-- [b]	n/a	n/a
Subtotal	**$12,146**	**$12,122**	**$11,817**	**$11,888**	**$12,861**	**$1,044**	**9%**
Other resources, e.g., user fees	539	655	695	905	497	-198	-29%
Total funding available for obligation	**$12,686**	**$12,777**	**$12,512**	**$12,793**	**$13,358**	**$846**	**7%**

Legend: n/a = not applicable.

Source: Fiscal Year 2012, 2013, and 2014 Congressional budget justifications for IRS.

Note: Dollars are nominal and not adjusted for inflation, and numbers may not add due to rounding.

[a] A full-year 2013 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Resolution, 2013 (P.L. 112–175). The amounts included for 2013 reflect the annualized level provided by the continuing resolution and do not include reductions due to sequestration.

[b] In fiscal year 2012, administrative resources for HITCA were moved to the Taxpayer Services appropriation under the Consolidated Appropriations Act, 2012 (Pub. L. No. 112-74).

When inflation and the new IRS enforcement responsibilities are considered, it is clear that the IRS's fiscal situation has significantly deteriorated. The increased enforcement responsibilities include the administration of the various taxes imposed by health care reform and the foreign account reporting of Foreign Bank and Financial Accounts Reporting (FBAR) and Foreign Account Tax Compliance Act (FATCA). At the same time, the IRS must combat significant increases in identity theft, Earned Income Tax Credit (EITC) and other fraudulent refund schemes.

Tax administration is enhanced with the promulgation of clear, concise rules and regulations and readily available assistance for taxpayers and tax professionals. These factors reduce taxpayers' compliance burdens, allowing resources to be used for more productive activities. The IRSAC commends the IRS for continuing to seek ways to improve taxpayer service, while reducing taxpayer burden by adding new and improved technology.

However, the IRS needs to be given sufficient resources to maintain its performance standards as a world class financial institution, able to handle and accurately account for numerous transactions with 140 million taxpayers, while protecting against identity theft, EITC and other fraudulent refund schemes.

Several IRSAC members have specific examples of increased inefficiency in operations due to the IRS reduced budget. These examples all show how budget cutbacks are increasing the taxpayer's inefficiency, reducing productivity of taxpayers and their professionals.

1) One member received a notice asserting that their employer corporation had an employment tax penalty. The corporate tax department conferred with their employment tax auditor who stated that the penalty related to a B notice relating to Form 1099. The taxpayer could not locate the B notice and the

employment tax auditor stated that a copy of the B notice could only be obtained by calling an 800 number in Cincinnati. The corporate taxpayer was on hold for more than one and a half hours and was then informed that since there was not an appropriate power of attorney on file, IRS personnel could not discuss the notice. Other members report that it takes an hour or more to get through to the Practitioner Priority Services Line or to general phone numbers listed on notices and that calls are often dropped after long waits. It is clear to all IRSAC members that there is a drastically shrinking level of service on the phone lines.

2) There are many delays in getting certificates of U.S. residency. Many foreign countries require a certificate to claim treaty benefits and avoid foreign withholding on royalty or interest payments. In prior years, the certificate could be obtained 1 to 2 months after the request was made, but this process now takes 3 to 4 months. When certificates cannot be filed timely, the foreign payer withholds tax and the U.S. taxpayer is forced to claim a foreign tax credit on their U.S. return to avoid double taxation. This generates unnecessary filings.

3) Many members report that examination and collection cases are taking longer to process than in past years. In addition, Examination often issues a notice of deficiency rather than give the taxpayer the opportunity to handle the case administratively in Appeals, even when there is sufficient time on the statute of limitations for referral to Appeals.

4) IRS speakers often cancel speaking engagements, limiting face-to-face contact with practitioners. Taxpayer Executive Institute (TEI) meetings with IRS professionals and corporate tax professionals have been cancelled due to limited travel budgets. Region V and VI of TEI (Midwest and southwest states) have traditionally held a liaison meeting with the IRS. The attendees are IRS leadership (e.g., Territory Managers, Transfer Pricing Practice personnel, Field Operation Directors) and TEI chapter leadership. Planning began in early 2013 and the IRS requested that IRS attendance be limited to those near the meeting venue. Subsequently, it was determined that IRS representatives could not attend. Therefore, a meeting used by the IRS to connect with a small group of large corporate taxpayers to understand issues and concerns was not possible. A second meeting involving IRS representatives (e.g., managers and counsel) and about 100 TEI attendees was cancelled because local transportation costs could not be incurred. The inability to incur minimal costs to meet with taxpayers limits the effectiveness of taxpayers and the IRS. In August 2013, IRS speakers cancelled participation in classes held at the National Association of Enrolled Agent's National Conference due to travel restrictions caused by budget cuts. Similarly, it appears the number of IRS Nationwide Tax Forums will be reduced in 2014; the forums are another way for tax professionals to understand IRS positions and help the IRS with tax compliance. Without face-to-face participation, meetings are not as well received and many participants are not as likely to have as valuable a learning experience. Practitioner meetings are useful for the IRS to understand taxpayer compliance issues and

allow the IRS to communicate technical positions and the basis for those positions to taxpayers.

Recommendations

1. Congress should appropriately fund the IRS to assure continued success in service, compliance and enforcement. Without adequate funding, both taxpayers and the tax system will continue to suffer. IRS personnel must receive the appropriate tools, training and technology to perform effectively. Advances in private sector technology are outpacing a resource-challenged IRS at a time when it is critical for the IRS to improve its technology and increase its full-time staff so it can operate effectively. Without adequate funding the IRS will continue to face difficult decisions when allocating limited resources between the compliance, enforcement and service functions. While the IRSAC recognizes the extreme importance of service to taxpayers, we also recognize that increased compliance and enforcement efforts are critical to the proper functioning of our voluntary tax system.
2. The IRSAC recommends that resource allocation decisions focus on ensuring that the service, compliance and enforcement efforts of the IRS are properly balanced. Inappropriately allocated limited service, compliance or enforcement resources only serve to foster future noncompliance and undermine respect for our voluntary tax system. Encouraging future compliance is of equal importance to punishing prior non-compliance. Tax administration is a constantly evolving process that requires the IRS to have adequate resources to react quickly, efficiently and effectively.

ISSUE TWO: THE IRS SHOULD CONTINUE TO EXPAND VOLUNTARY CORRECTION PROGRAMS TO FACILITATE TAXPAYERS SELF REPORTING PRIOR YEAR NONCOMPLIANCE

Executive Summary

Our federal tax system is a voluntary tax compliance system, which relies upon annual income tax returns filed by taxable and nontaxable entities such as individuals, corporations, trusts, partnerships, and tax exempt entities. Generally the taxpayer, rather than the government, has the necessary information to determine the tax liability. Enforcement relies on the information that taxpayers provide and the IRS needs to facilitate voluntary compliance.

Background

Mistakes inevitably will occur and taxpayers need simple and efficient methods to correct errors and pay the appropriate amount of tax. Accounting method changes that are voluntarily requested by the taxpayer, and not part of an IRS audit, typically are more favorable to the taxpayer. For over two decades, the IRS has allowed qualified retirement plans to correct errors using an agreement between the IRS and the plan or plan sponsor that specifies how to correct the error and may include paying a compliance fee. More recently, the IRS has used a number of voluntary disclosure programs for reporting foreign income. In 2012, the Classification Settlement Program, used by taxpayers who have misclassified workers as independent contractors, was expanded to include a voluntary procedure.

The third-party information return filing system serves as a vital tool to both ensure proper tax compliance and to combat fraud and identity theft, and matching third-party reporting of income is the most efficient audit technique available to the IRS. Each year, the IRS closes many cases in which a discrepancy was identified between the taxpayer's return and third-party information, resulting in corrected tax returns. Undoubtedly, third-party information return reporting will continue to play an important role in tax administration and compliance enforcement.

Although many individual taxpayers file amended returns when changes are necessary, a more efficient way to process these adjustments is to promote correcting information returns such as Form W-2 and Form 1099. By allowing the preparer of information returns to pay unpaid taxes, the IRS can avoid processing numerous amended income tax returns with small additional taxes due. Sometimes, an error affects hundreds or even thousands of taxpayers, each in an insignificant way. Preparers of information returns strive to report accurately. Providing an efficient way to correct these errors and pay any unpaid tax without burdening the recipients, results in significantly less work for taxpayers and the IRS. Providing an effective way to correct these errors also avoids needlessly creating business issues in the case of incorrect Form 1099s and poor employee morale issues in the case of incorrect Forms W-2.

Given the finite resources available for IRS enforcement efforts and the voluntary nature of the U.S. tax system, it is appropriate for the IRS to encourage taxpayers to discover tax compliance errors. This can be done by promoting standardized methods to correct errors. When an error is discovered, the entity should be able to bring the error to IRS's attention and pay a negotiated amount that approximates the actual tax liability if the error was not made. Closing agreements could be used for some taxes; for income taxes this could involve a process for adjusting the current year's tax filing. In cases where the error is relatively small and not likely to have a material tax affect, it should be possible to avoid adjusting the information returns, but rather just to pay a negotiated compliance fee amount.

Currently, IRS policy and taxpayers' anecdotal experiences are more discouraging than encouraging. For example, Internal Revenue Manual Exhibit 8.13.1-12 contains a pattern information reporting closing agreement program for understatement of income on Forms 1099 and states that "[i]n cases of underreported income brought to the attention of the Service by a payer, a rate of 28 percent will be applied to the total amount of the understated reportable income." In addition, Internal Revenue Manual Section 4.23.8.8 provides that the supplemental wage withholding rates (currently either 25 percent or 39.6 percent) generally should be used when income taxes are not withheld unless the employer is eligible to use the 25 percent rate and can establish each employee's allowable number of exemptions from Form W-4. Because errors may be discovered years after they occurred, information regarding the Form W-4 is often not readily available and the supplemental rate would be used. In most cases, the IRS mandated rates create a result in excess of the tax owed. Similarly, the tax rate applicable to interest, dividend and other miscellaneous income reported on a Form 1099 is usually less than 28 percent.

The IRS is often unwilling to enter into a closing agreement for unpaid employment taxes if the number of affected employees is small, even if the taxpayers are unsophisticated in tax matters and will need professional advice to determine if an amended return is required and to prepare the amended return.

Employers have anecdotally found that the IRS has been increasingly unwilling to allow Form W-2 underreporting to be resolved by the employer without furnishing Forms W-2c to the affected employees, even when the only meaningful change to report is a change in social security wages. Most employers want to provide the Social Security Administration with updated wage information if the change affects an employee's social security benefits, but are reluctant to confuse their workforce with these forms when no amended returns income tax returns are required.

With business income tax returns, small omissions or errors are often discovered after a return is filed. In the case of an income tax year currently being audited, a list of items is typically handed to the agent at the start of the audit and adjustment is made in the audit. However, many taxpayers are not audited and while loss carry forwards can be adjusted, being able to adjust small errors and omissions in a current filing would result in less costly tax compliance. The adjustment could be on a separate schedule that details the error. Because tax rates may vary, it would be possible to require tax to be paid at the prior year's rate. By using a separate schedule, current year's taxable income would not change. Easing the burden of adjusting small errors and omissions would likely result in more corrections.

Adjusting returns for flow-through taxpayers (e.g., partnerships, S corporations, trusts) is particularly burdensome. Correction for errors and omissions on those returns could more easily be handled with a current year adjustment, even if a separate schedule is used to show the amount related to the prior year. If the prior year is adjusted, it is most important that the adjustment be able to be done at the entity level to reduce the burden of adjusting at the shareholder, partner or beneficiary level. Flow-through entities cause other problems for their partners, shareholders and beneficiaries who often rely on estimated amounts to file individual returns earlier than when the flow-through information is finalized. Allowing individuals to correct estimated information in a subsequent year's return would eliminate the need for filing amended returns.

Finally, the IRC Section 409A rules for nonqualified deferred compensation often result in errors that generate a 20 percent additional tax for the employee or service provider. Where the employer or service recipient has made the error, they want to pay that tax and not be required to inform employees or service providers of the error. This is not possible under the current correction programs, as reporting of the error on an annual income tax return is required. In addition, the current correction programs are only available for errors found within two years of the occurrence of the error. This is not often long enough to allow for the correction of all discovered errors.

The recent Supreme Court decision invalidating the Defense of Marriage Act is a good opportunity for the IRS to allow corrections for overpaid taxes to be recognized in the current year. As a result of the Court decision, many individuals not previously recognized as spouses, or eligible for the tax benefits associated with being a spouse, are now eligible for those benefits retroactively. With respect to the taxation of fringe benefits available to spouses, this will affect individuals and employers preparing information returns if the tax year is not closed. To avoid numerous amended income tax returns, an adjustment could be made in 2013 returns to approximate the tax benefit available had the tax benefit available to spouses been recognized in the prior year.

Recommendations

1. Issue administrative guidance and revise the Internal Revenue Manual to allow closing agreements to be entered into to correct underreporting errors on Forms 1099 and W-2 by having the entity responsible for the error pay a negotiated amount approximating the actual tax liability the affected population would have paid if the error had not occurred. Also require Form W-2c to be prepared and filed with the Social Security Administration only for those employees who have an increase social security wages as a result of the additional reported income. This should be able to be used for both open and closed years.

2. With respect to minor errors and omissions, issue administrative guidance and forms so that taxpayers can either amend the tax return for the year of the error or include corrected income amounts on a special schedule on the current year's filing.

3. Issue administrative guidance and revise current forms to allow flow through entities to pay a compliance fee at the entity level if an amended return is not desired.

4. Expand the correction program for IRS Section 409A to allow employers and other service recipients to pay a negotiated sanction approximating the actual tax liability and an appropriate gross up amount that the affected population would have paid if the error had not occurred. To the extent such errors affect social

security wages and recipient's social security wages are below the annual wage base for the affected year, require that Form W-2c is prepared and filed with the Social Security Administration. No other Form W-2cs should be required to be filed and none should be required to be furnished to individuals.

Conclusion

The IRSAC members are grateful for the opportunity to serve the Internal Revenue Service and taxpayers. It is readily apparent that the IRS is continually required to "do more with less" resources while operating in a complex, ever-changing environment throughout the world. The IRS is to be highly commended for its historical and continued efforts, and vast accomplishments, on behalf of tax administration.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

LARGE BUSINESS AND INTERNATIONAL
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

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

The Subgroup has had the opportunity to discuss several topics throughout the year with LB&I management. This report is a summary of those discussions and the Subgroup's recommendations with respect to each topic. We would like to thank LB&I Commissioner Heather Maloy and the professionals on her staff for their time spent discussing these topics with the Subgroup and for their valuable input and feedback.

The Subgroup is reporting on the following three issues:

1. **Risk Assessing Large Taxpayers**

   LB&I management asked the Subgroup to recommend risk assessment techniques that may be employed as part of the audit selection process. We suggested a list of audit screening procedures including those successfully implemented by tax authorities in Australia and the U.K.

2. **LB&I Industry Specialization**

   The IRS has recently introduced Issue Practice Groups as a knowledge management tool. The Subgroup has provided suggestions for integrating specialized industry knowledge currently existing within the LB&I organization into these groups. Our suggestions focus on establishing webpages for each sub-industry group that will house information that has been developed internally by the IRS as well as externally available resources.

3. <u>Schedule M-3, " Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More"</u>

The Subgroup was asked for suggestions on revising Schedule M-3 so that the IRS could use it as an effective risk assessment tool to decide which taxpayers to audit and issues to examine. We recommend that Part I of the schedule be retained as it provides a critical reconciliation of income to the taxpayer's financial records and that Part II and III be eliminated and replaced with Schedule M-1.

ISSUE ONE: RISK ASSESSING LARGE TAXPAYERS IN DETERMINING THE SELECTION, EXTENT AND FOCUS OF IRS EXAMINATIONS

Executive Summary

As both the IRS and large business taxpayers have limited resources, each would benefit from the IRS risk assessing taxpayers and their filed tax returns prior to examination. In this manner, only high risk taxpayers would require significant IRS examination. The current Compliance Assurance Process (CAP) program has proven that full disclosure and transparency are beneficial both to the IRS and to taxpayers in resolving issues. By risk assessing taxpayers in advance of examination, many taxpayers would require a much more limited inquiry or review by the IRS. The examination process could become more focused both as to taxpayer selection and the extent of IRS review.

The tax authorities of Australia and the U.K. have adopted risk assessment processes and classification systems that guide the extent of their examinations of large businesses. This report examines the benefits of LB&I adopting a similar approach.

Background

To better focus LB&I's limited resources, the Subgroup was asked to provide advice on ways LB&I should risk assess a filed tax return before it goes to examination, and to identify opportunities to improve the LB&I examination process. We were asked to suggest which factors might indicate a higher risk taxpayer. During our meetings with the Commissioner and senior members of LB&I, we examined and discussed the risk assessment policies employed by the tax authorities of the Australian Taxation Office (ATO) and the U.K. HM Revenue & Customs (HMRC) (See appendix B of the 2008

IRSAC Report). Both the ATO through its “Risk-Differentiation Framework Categorization” (RDF) and the HMRC through its “Varney Reviews” risk assess large business taxpayers and categorize each using a scale of high risk to low risk. The risk rating, while not public, is shared with the taxpayer and is reviewed annually to determine the continued appropriateness of that rating. Those taxpayers with higher risk ratings receive a much more extensive review of their tax return filings. Commissioner Michael D’Ascenzo of the ATO provided the following guidance to large businesses: “We encourage those responsible for tax functions to ensure that sound organizational governance is in place to manage tax risks. We also encourage you to develop and maintain an open and cooperative relationship with us. . . . How you choose to manage tax risk determines how we engage with you.” (Copies of the Australian Taxation Office Law Administration Practice Statement PS LA 2011/6 are included in Exhibit A.)

Implementing such a change of approach would entail significant challenges for both the IRS and taxpayers. Many of the factors indicating a taxpayer’s level of tax risk may be subjective and often difficult to document by both the taxpayer and the IRS. Currently IRS personnel are not trained in risk assessment methodologies, for example the effectiveness of a taxpayer’s information reporting technology. If such a risk assessment approach is to be seriously considered by the IRS, our Subgroup made two suggestions before implementation on a wide scale. First, any proposed risk assessment methodology should be co-developed and evaluated using a select group of large taxpayers currently participating in the CAP program. The taxpayers who participate in the CAP program have a demonstrated level of transparency and desire to improve the examination process, and importantly, a working relationship with the IRS. Second, when obtaining data from a taxpayer related to assessing tax risk, the initial request for data should be in the form of a "yes or no" list of indicators that is part of the filed tax return. Such a checklist could be a section of the Schedule UTP "Uncertain Tax Positions." The UTP could be changed so that this section would be required to be filed by all taxpayers. If the responses to the initial questions signify that additional information may be required, then the IRS can focus on those particular areas for further inquiry.

Some of the factors listed below do not lend themselves to a simple yes or no answer and therefore may not be appropriate for inclusion in a questionnaire as part of the tax return. They may, however, be components of a more subjective analysis of the taxpayer's overall risk assessment. After reviewing the guidelines and materials published by the ATO and HMRC, as well as the suggestions of the Subgroup, we suggest that LB&I consider the following factors in risk assessing large businesses:

1. The amount of guidance and oversight provided by the board of directors should be a key factor. For example:
    a. Does the Chief Tax Officer make periodic presentations to the board of directors or one of its designated committees?
    b. Has the board provided guidance to management and the tax department as to the level of tax risk that should be taken by the company?
    c. Is there in place appropriate review and sign-off procedures for material transactions, thereby ensuring that significant tax risks are elevated to the board?

2. Does the taxpayer have a history of overly aggressive tax planning and involvement in tax related structured transactions?
3. Has the company reported a material weakness or financial restatement related to tax matters?
4. Does the taxpayer have the involvement of the corporate internal audit department in reviewing the tax function?
5. Does the taxpayer have a presence in known tax havens?
6. Has the taxpayer been a party to a recent merger or acquisition that may cause a significant change in tax department personnel or availability of tax reporting data?
7. Do the reported financial results or tax return information differ significantly from industry norms?
8. Are there unexplained tax losses, low effective tax rates, and cases where a business or entity consistently pays relatively little or no tax? Are the amounts paid in taxes in line with the business's reported financial results?
9. Is the taxpayer experiencing rapid growth, restructuring, mergers or divestitures, deploying new accounting software or undergoing significant changes in accounting or tax department staff?
10. What percentage of the tax function staff is subject to professional responsibility rules imposed by professional bodies such as the American Bar Association (ABA), American Institute of Certified Public Accountants (AICPA), etc.? Do

members of the tax function staff engage in required continuing education? Has there been a high turnover of tax department personnel?

11. Is the data collection by the tax function automated with sufficient technology, processes and controls to ensure that accurate financial and tax data are provided?
12. Has the taxpayer performed a documented tax risk assessment and implemented a tax risk management policy that goes beyond the requirements of Sarbanes-Oxley section 404?
13. Regarding the tax function of the business, are the roles and responsibilities associated with overall tax compliance clearly defined? Does the tax function have adequate resources to provide accurate tax returns and assistance with IRS examinations?
14. Does the Schedule UTP indicate a lack of adequate descriptions, the presence of questionable positions or the disclosure of large amounts?
15. Has the taxpayer been involved with major tax planning initiatives during the year such as a research credit review?
16. What is the prior IRS examination history of this taxpayer? Were significant adjustments made to the tax returns as a result of these prior examinations?
17. Are there industry wide issues for the taxpayer's business that may require the IRS to examine the tax returns?

Recommendations

1. The IRS should consider implementing a risk assessment of large businesses that provides a defined and known risk assessment classification. The IRS should then

modify its examination selection criteria to focus on taxpayers who display a high level of risk of non-compliance or aggressive tax reporting. The IRS should also focus its limited resources on taxpayers and issues that warrant its attention as identified through the new risk assessment protocol.

2. In determining how to implement a risk assessment classification system, LB&I should consider the factors suggested in this report. LB&I should also review the guidance provided by the ATO and HMRC who have already implemented such a system.

3. An open and transparent interaction between taxpayers and the IRS has many benefits for both parties. Schedule UTP and its required disclosures provide the IRS with a list of the taxpayer's uncertain tax positions. Using this information, the IRS can better focus on the technical merits of disclosed taxpayer filing positions rather than spending significant amounts of time and resources attempting to identify them. The IRS should expand its own transparency by publicly indicating areas of examination focus in advance. In that way, taxpayers have the time to (1) ensure that their information, systems and processes are in place to provide the IRS the information should there be an examination and (2) ensure that they are properly reporting the information on their tax returns in the first place.

4. Before implementing a risk assessment protocol for selecting taxpayers for examination or determining the extent of an examination, the IRS' tax risk assessment methodology should be co-developed and evaluated using a select group of large taxpayers currently participating in the CAP program.

5. When obtaining data from a taxpayer related to assessing tax risk, the initial request for data should be in the form of a “yes or no” list of indicators that is part of the filed tax return. Such a checklist could be a section of the Schedule UTP. If the responses to the initial questions signify that additional information may be required, then the IRS can focus on those particular areas for further inquiry.

ISSUE TWO: LB&I INDUSTRY SPECIALIZATION

Executive Summary

LB&I asked for the Subgroup's assistance in identifying ways to bring greater industry specialization to its Issue Practice Groups. The Subgroup has addressed similar issues in the past and recommended greater commercial awareness through education and training. The Subgroup has identified various concrete steps that LB&I should take in order to better develop and deploy industry knowledge throughout its Issue Practice Groups.

Background

Recently, LB&I introduced a knowledge management network that uses Issue Practice Groups ("IPGs") for domestic issues. IPGs are designed to provide examination teams the technical information they need to manage their cases efficiently, consistently and with a high degree of technical proficiency. IPGs are designed to foster effective collaboration and the sharing of knowledge and expertise across LB&I and Chief Counsel. LB&I views the IPGs as balancing the need for consistency with the recognition that there is no "one size fits all" approach to examining and resolving issues.

According to LB&I, the IPGs reflect the fact that no one LB&I employee has all the answers. IPGs are a resource for examiners, managers and executives to use during audits and in managing compliance priorities. Agents are encouraged to consult IPGs, especially when they encounter issues with which they are not familiar or when dealing with complex technical issues.

Currently, LB&I has identified the following IPGs:

1. Partnerships and TEFRA
2. S Corporations and Cooperatives
3. Compensations and Benefits
4. Corporate Distributions and Adjustments
5. Corporate Income and Losses
6. Business Credits
7. Energy and Investment Credits
8. Penalties
9. Financial Instruments
10. Inventory and 263A
11. Methods of Accounting
12. Deductible and Capital Expenditures
13. Life Insurance
14. Non-Life Insurance
15. Regulated Investment Companies (RICs), Real Estate Investment Trusts (REITs) and Real Estate Mortgage Investments Conduits (REMICs) and Banking.

LB&I recognizes that it has considerable industry knowledge within this network. For instance, many professionals have joined the IRS from private industry or private practice and bring with them special knowledge of various industries. Moreover, other IRS professionals have developed similar special industry knowledge by working with taxpayers in certain industries. LB&I would like to manage this knowledge throughout its IPGs. Thus, they have asked the Subgroup for examples of how this experience and special knowledge is managed in private practice at accounting firms or law firms.

LB&I has identified the following sub-industries for this initiative:

1. Aerospace/Classified/Government Contracts
2. Agriculture/Bio Fuels
3. Air Transportation
4. Alternative Energy
5. Banking, Commercial and Savings & Loan
6. Biotech
7. Chemicals Industry
8. Construction
9. Entertainment/Media
10. Environmental Issues
11. Food, Beverage & Hotels
12. Forest Products
13. Gaming
14. Healthcare
15. High Technology
16. Marine Shipping
17. Mining

18. Motor Vehicle
19. Petroleum
20. Pharmaceuticals
21. Railroad/trucking
22. Retail
23. Securities and Financial Services
24. Sports
25. Telecommunications
26. Utilities

The Subgroup met with LB&I and discussed several models used in private practice. The sub-industries identified by LB&I were consistent with the private practice groupings. The Subgroup also shared the features of some of the models. A key consistent feature of the models is a webpage or a virtual home space to house the content for each of the sub-industries. For instance, an industry webpage in private practice may include the following:

- Industry thought leadership and events
- Industry articles and news
- Industry trends
- Company profiles
- Subsectors of the industry
- Learning opportunities

- Contact information of group members/directory

The Subgroup discussed how this model could apply to LB&I and concluded that articles, industry trends, subsectors, learning opportunities, and a member directory would be the most appropriate content to adopt initially as the information would be readily available.

Beyond the home space model, the Subgroup also discussed with LB&I some ideas about how each one of its sub-industry groups could be developed using information from taxpayers, external industry groups, and practitioners. A few of the ideas that were shared included:

- Deploying IRS professionals effectively so they receive the proper industry experiences. This is important to continue their professional development and their utility to the industry group.
- Providing internal industry training to supplement the experiences noted above.
- Participating in outside training and outside industry groups to further develop industry knowledge and expertise. For instance, IRS Counsel has a contract with Practising Law Institute (PLI) that allows its employees to participate in conferences on-line at no cost.
- Reading identified industry treatises and journals.

LB&I should consider how these ideas best apply to its unique mission. The Subgroup believes that there are several benefits to adopting this approach:

- LB&I will be better prepared to identify industry trends that could affect tax administration.

- Taxpayers will be able to work with LB&I professionals who have better knowledge of their industry.
- Both LB&I and taxpayers may experience more focused examinations.
- LB&I professionals will be able to develop their careers and personal “brand” as a person with specific industry knowledge.

Recommendations

1. LB&I should assemble a list or poll of its professionals to ascertain what knowledge and experience they have within the identified sub-industries.
2. LB&I should construct a web page or home space for each sub-industry which would include some of the resources and information identified above as appropriate and assign a knowledge manager to each sub-industry who would be responsible for maintaining the content.
3. LB&I headquarters should get a central subscription to the industry tax and audit guides offered by AICPA at low cost, possibly requesting that the AICPA provide to government employees at no charge.
4. LB&I should encourage employees to join and become active within industry groups and professional associations, which often offer discounted memberships for government employees. We note that there are budget and policy constraints that may preclude reimbursing for individual memberships. Therefore LB&I should explore whether central or no cost memberships could be negotiated with these groups.
5. IRS should expand the present contract that Chief Counsel has with PLI to include LB&I so that its employees may participate in conferences on-line.

6. LB&I should identify the particular members of the taxpayer community (e.g., companies, industry groups, practitioners, etc.) from which they would like to gain greater industry knowledge. LB&I should then use the information from this community to develop its industry home spaces with industry materials and, perhaps, establish joint educational programs with this community.
7. In addition to the formal educational programs, LB&I should pursue and establish contacts to work on industry projects and initiatives on an informal basis

ISSUE THREE: SCHEDULE M-3

Executive Summary

The completion of Schedule M-3 represents a significant compliance burden for taxpayers. The Subgroup questions whether the considerable resources needed to complete and use the form is commensurate with the benefit derived by the IRS through a reduction in audit time or increase in issue identification. We recommend that Parts II and III of the form be replaced with Schedule M-1.

Background

Schedule M-3 is required to be filed as part of the annual income tax return for corporate taxpayers and certain partnerships, with assets of $50 million or more. It was first introduced for tax years ending on or after December 31, 2004 for taxpayers with assets of $10 million or greater and replaced Schedule M-1 which required a detail of items where book treatment differed from tax treatment.

Schedule M-3 has three parts. Part I requires a reconciliation of book income reported on the tax return to income reported in the taxpayer's financial statements. Parts II and III require a reconciliation of book income to taxable income and require that the differences be categorized by the descriptions on the approximately sixty line items of Part II (for income items) and Part III (for expense items). The book amount is reported in Column (a); the difference between the book amount and taxable amount is reported in Column (b) if temporary or Column (c) if permanent; and the taxable amount is reported in Column (d). As has been noted in early discussions that the IRS had with taxpayer groups when the schedule was being developed, the lines in Parts II and III do not correspond to items in a taxpayer's general ledger nor do they necessarily correspond to line items on page one of the tax return and therefore, there is much work required in mapping from the general ledger to those lines. This initial outlay of resources is further exacerbated by the fact that taxpayers frequently make changes to their chart of accounts in their general ledgers and that the Schedule M-3 lines have changed over time both of which require additional mapping time by taxpayers. Also, since 2004 Schedule M-3 has been changed to require detailed reporting of book and tax amounts for cost of goods sold, research and development expenses, and interest income and interest expense.

The Schedule M-3 was introduced to provide uniform reporting of book tax differences and was to be used by the IRS as a risk assessment tool in selecting taxpayers and issues for audit. However, the Subgroup questions whether this has in fact happened. Instead there is much audit time spent auditing Parts II and III to ensure that Column (a) amounts can be traced back to the general ledger. IRS auditors have asked for the mapping of the book amounts from the general ledger to each line of Parts II and III. Given that there are over 50 lines and that each line may be a combination of many general ledger accounts, there is considerable effort spent by the taxpayer in preparing Parts II and III (as noted above) and by the IRS auditor in reviewing the mapping. The time spent in such a review of the mapping by the auditor leaves less time for a review of the substantive issues that may underlie the amounts disclosed on the form.

After the issuance of Schedule UTP applicable for 2010 tax years the IRS undertook a study to see if the Schedule M-3 should be revised. The IRS asked for comments from taxpayers. Both the AICPA and Tax Executive Institute (TEI) submitted comments in 2011 that echo those of the Subgroup: the form takes a lot of time to complete; it is not being used effectively by the IRS in their audits; and thus it represents a burden to taxpayers and the IRS. (Copies of the comments letters are included in Exhibit B). One of the outcomes of the study was that in May 2013 the IRS announced that taxpayers (other than insurance companies and any related companies) with between $10 million and $50 million of assets may choose to complete Schedule M-1 in lieu of Parts II and III of Schedule M-3. Such taxpayers represent over 50 percent of the Schedule M-3 filers and such a change in filing requirements will represent a significant burden reduction.

Recommendations

1. Part I of Schedule M-3 that reconciles the book income reported in the tax return to that reported in the financial statements provides necessary information many taxpayers compile as a compliance check in preparing their business tax returns. Before the issuance of Schedule M-3, the information required in Part I was usually requested by IRS auditors as part of an examination. That section of the schedule should be maintained.
2. Parts II and III of the schedule should be eliminated and replaced with Schedule M-1. We note that the Schedule M-3 study that the IRS conducted contained this recommendation for taxpayers having assets between $10 and $50 million and believe that the burden should also be alleviated for larger taxpayers. We also note that all corporate taxpayers with assets of $50 million or greater are required to disclose uncertain tax positions on Schedule UTP. The information provided

by this schedule can be used to risk assess large taxpayers in lieu of the Schedule M-3.

3. The Schedule M-1 could be supplemented by requiring disclosure of book and taxable amounts of certain high risk items. These might include those that are prone to differences in interpretation and judgment calls as well as those that involve detailed computations. Additionally, the form could include yes/no questions that indicate if the return contains certain transactions or high risk issues in excess of a stated amount without requesting the book and taxable amount.
4. In our discussions with LB&I management we were informed that there are other government stakeholders including Congressional committees and other agencies who have expressed concerns about removing information from the form. Given the significant burden that completion of the form places on taxpayers, we strongly suggest that the IRS determine how the data is being used and determine if the Subgroup's recommended revisions would satisfy those information needs.

Practice Statement Law Administration

PS LA 2011/6

SUBJECT:	**Risk and risk management in the ATO**
PURPOSE:	**To provide guidelines to staff on risk management in the context of dealing with outstanding taxation debts**

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

BACKGROUND

1. The taxation system relies on taxpayers voluntarily complying with their obligations under the law. The risks involved in administering this system may require decisions that, while not cost effective, are designed to support the integrity of the system by reinforcing the message that there are serious consequences for those who choose to avoid their obligations under the tax laws.

2. Unlike someone operating in the private sector, the Australian Taxation Office (ATO) cannot select its clients and cannot refuse to deal with taxpayers simply because they have not lodged or paid. On the other hand, the ATO is not, and never will be, resourced to chase every last dollar of revenue payable under the law. This means that the ATO is required to make intelligent choices about what compliance risks will be treated, how such risks will be treated and where to best apply available resources.

3. The risk managed by those responsible for securing outstanding tax returns and statements, or for collecting outstanding tax debts (including all additional charges for late lodgment or late payment imposed by legislation) is that, the returns and statements may not be lodged or debts may not be paid within time frames acceptable to the Commissioner, if at all.

4. For those dealing with the collection of outstanding amounts, risk is about making decisions to do something in the most cost effective and timely manner, based on an evaluation of all the circumstances.

5. The factor of risk is not only involved in the more common decisions about events such as extending time for lodgment, deferring further action, remitting additional charges for late lodgment, deferring time for payment, permitting payment by instalments or remitting general interest charge (GIC), but it is also a factor in decisions about matters such as:

- identifying risk groups
- non pursuit of debts
- how to vote at creditors' meetings
- whether to initiate recovery action for collection of disputed debt
- the type of action initiated
- taking action to protect or secure the debt
- granting an indemnity to a trustee or a liquidator, or
- whether or not to settle defended debt recovery litigation and/or the necessity to test cases to clarify the law where the prospect of recovery is uncertain.

In other words, risk management must be seen as preparation for events - in advance where possible, rather than responding as they happen.

STATEMENT

The compliance model

6. This policy for the securing of lodgment of outstanding returns and statements and the collection of taxation debts is an integral part of the ATO's strategy to improve taxpayer compliance. While the policy is primarily concerned with taxpayers meeting their payment and lodgment obligations, its contribution to taxpayer compliance overall can be demonstrated by reference to the compliance model, as illustrated:

7. The compliance model promotes a deeper understanding of taxpayers' motivation, circumstances and characteristics so that assistance and enforcement actions can be tailored to improve compliance. The ultimate aim of the compliance model is to influence as many taxpayers as possible to move down the pyramid into the 'willing to

do the right thing' zone. Analysing compliance behaviour in this way assists us to address the actual causes of non-compliance rather than the symptoms.

8. The principle of the compliance model applies to every facet of tax administration and is used widely at both strategic and operational levels.

9. A taxpayer's attitude to compliance, and their consequent behaviour, is unlikely to be limited only to having an effect on lodgment of returns or other documentation or payment of taxation debts. It may also include the making of false statements, non-cooperation or illegal activities. While the immediate effect of our strategies and actions may result in a payment or lodgment, they should also be designed to maximise the likelihood that the taxpayer will comply voluntarily with all of their obligations in the future, including the obligation to lodge correct documentation and pay the correct amount on time.

10. The determination of which strategies to adopt to achieve this is predicated on an evaluation of the overall compliance risk posed by the taxpayer, and this is based on their individual circumstances. In other words, the ATO needs to differentiate its treatment of taxpayers according to their ability to meet their tax responsibilities and the circumstances they face in doing it. This is consistent with the intent of the taxpayers' charter. The compliance model clearly links the degree of compliant attitude (and consequent behaviour) to the severity of the strategies. In applying this model, the ATO will consider all available behavioural information (not just lodgment history, or payment and debt performance), together with an understanding of why there was any previous non-compliance. As an example, previous non payment of a debt could be the result of either an unwillingness to pay, or of a willingness to pay combined with an inability through various circumstances (for example flood, fire). This policy recognises that the former attitude and behaviour warrants more severe sanctions (prosecutions, actioning debt despite outstanding disputes, denial of arrangements without security), while the latter does not.

Fraud on the Commonwealth

11. As noted in the Commonwealth Fraud Control Guidelines 2002, fraud against the Commonwealth is a major concern to the Australian Government. The Government is committed to protecting Commonwealth revenue, expenditure and property from any attempt to gain illegal financial or other benefits. The Commonwealth Fraud Control Guidelines outline the Australian Government's requirement that Australian Government agencies put in place a comprehensive fraud control program that covers prevention, detection, investigation and reporting strategies. The Corporate Management Practice Statement PS CM 2007/02 describes the ATO's policy and attitude towards fraud, including both internal fraud and taxpayer fraud.

12. Fraud is defined for the purposes of the Commonwealth Fraud Control Guidelines as 'dishonestly obtaining a benefit by deception or other means' - and includes both tangible and intangible benefits.

13. Australian Government agencies such as the ATO are expected to consider prosecution in appropriate circumstances, in accordance with the Prosecution Policy of the Commonwealth. Criminal prosecutions are vital to deterring future instances of fraud and to educating the public generally about the seriousness of fraud. As expected of all Australian Government agencies, the ATO is committed to recovering losses caused by illegal activity through proceeds of crime and civil recovery processes and, in the absence of criminal prosecution, to applying appropriate civil, administrative or disciplinary penalties.

14. Where a loss to the Australian Government has occurred as a result of a fraud, the Commissioner will apply the principle of the compliance model in ensuring that every recovery sanction is pursued in seeking restitution of the loss to the Australian Government. Where such loss cannot be recouped through the proceeds of crime process, the Commissioner is committed to pursuing civil recovery against the perpetrators of such fraud to bankruptcy, if necessary.

Aggressive tax planning schemes

15. Aggressive tax planning (ATP) undermines the policy intent of the law and erodes community confidence in the fairness and equity of the tax system. It spans a range of activities including some arrangements which are mass

marketed to salary and wage taxpayers. The common intention of participants in these activities is to obtain some form of tax benefit. ATP arrangements are likely to attract the operation of the general anti-avoidance provisions in the tax laws.

16. To achieve long term compliance, the ATO is undertaking a range of strategies to counter ATP. These strategies, which are consistent with the compliance model, are intended to encourage participants in ATP schemes to voluntarily meet their future taxation obligations.

17. Risk management in the context of an ATP case requires a balanced approach to moderate any loss and ensure the best return to the revenue having regard to commercial considerations. This can be a difficult task as the past behaviour of a participant which reflected a non-compliant attitude may not necessarily translate into a risk to revenue, particularly where the participant is willing and able to meet payment of the resulting debt. Accordingly, the risk assessment process must take into account the potential risk exhibited by the participant's non-compliant attitude in the past as well as the participant's present capacity and willingness or otherwise to pay.

18. Risk management decisions should take into account the participant's history of involvement in ATP arrangements as well as the attitude and behaviour exhibited by the participant before and after the assessment process. Such behaviour and attitude may be reflected in the steps taken to mitigate any perceived risk. These steps may include:

- enquiries made with the ATO prior to entering the ATP arrangement
- willingness to assist with ATO enquiries
- willingness to enter payment arrangements
- voluntary disclosure through self-amendment
- minimum payment of 50% of the tax in dispute
- provision of adequate security, or
- diligent actioning of objection and appeals.

19. In line with the theme of the compliance model and within the intent of the taxpayers' charter, the measures to be applied in ATP cases should, therefore, reflect the taxpayer's past and present circumstances without being unduly punitive by reason of their involvement in ATP. On the other hand, care should be exercised to ensure that no financial advantage is conferred upon scheme participants to the detriment of those taxpayers who comply with their taxation obligations.

Disputed debts

20. The ATO debt collection strategy is premised on prompt payment being received as it recognises that an ageing debt becomes more difficult to collect.

21. An ageing debt normally increases in size through the accrual of GIC and the taxpayer's financial position may deteriorate in the interim, making collection of that debt more difficult than a new debt. Accordingly, any factor which is likely to cause or contribute to delay in the collection of a debt must be regarded as an inherent element of

risk.

22. Generally, the longer a debt is in dispute, the greater the risk to the collection process. In order to assess the level of risk associated with a disputed debt, the following matters need to be considered:

- The subject matter of the dispute (genuine dispute, ATP, tax evasion or other), which may reflect a non-compliant attitude to taxation laws, though not necessarily a risk to collection of the disputed debt.
- Whether the subject matter of the dispute is dependent on a test case which may be an indicator that the disputed debt may not be collected for some time (that is, until a final decision is given on a test case).
- Whether the dispute is frivolous or meritorious, which may indicate a high level of risk in instances where the taxpayer has no prospect of succeeding and is deliberately prolonging the inevitable while possibly rearranging their financial affairs to frustrate the Commissioner's recovery action.
- Whether any tax not in dispute is outstanding. This is an inherent risk and could include an indication of unwillingness or inability to pay.
- Whether a minimum of 50% of the tax in dispute has been paid (which would indicate good faith) reducing the GIC and lowering the perceived level of risk.
- The level of cooperation by the taxpayer which is an indicator of the bona fides of the taxpayer to promptly resolve the dispute and remove any impediment to collection.
- Whether the taxpayer's assets are held in the name of other entities (for example, company, trust, superannuation fund, or family members). This may be an indication of high risk - particularly where the taxpayer is personally insolvent and protracted litigation for recovery of the debt may prove futile.
- Any significant change in the taxpayer's financial position since the raising of the debt (that is, any evidence of dissipation or alienation of assets). This is another potential indicator of high risk which may compel the Commissioner to institute immediate legal action or seek injunctive relief.
- Any subsequent action by the taxpayer since the raising of the debt (for example, signing of a section 188 authority under the *Bankruptcy Act 1966* , frivolous application for release, frivolous application under section 39B of the *Judiciary Act 1903*). Any of those actions may, on their facts, be construed as an attempt to avoid payment and as indicative of a high level of risk.

Defended debt recovery litigation

23. Risks identified in the debt collection process may often warrant the commencement of litigation for recovery of taxation debts. The delay caused by the lodgment of defences to debt litigation proceedings can pose a significant risk to the timely collection of revenue.

24. Law Administration Practice Statement PS LA 2009/9 Conduct of Tax Office litigation outlines the ATO's approach to risk management in ATO litigation. Once a matter is in litigation, the litigation team must undertake a separate risk assessment to determine the level of the litigation risk associated with the case. This will assist the team to determine and apply the most appropriate litigation strategy.

25. The risk assessment process continues throughout litigation. Accordingly, at any time during the litigation proceedings, additional facts may emerge or the debtor may advance submissions for settlement, which show upon reassessment of the risks involved, that the level of risk warrants bringing litigation to an end by settling the matter. Law Administration Practice Statement PS LA 2011/7 Settlement of debt recovery litigation provides guidelines for settlement of debt recovery litigation.

The risk management context

26. Risk management is not an exact science. However, it is integral to the process of deciding what the Commissioner should do to avoid the undesirable outcome in which returns and statements are not lodged on time, debts are not paid promptly, and some debts are not paid at all. This decision-making process entails the evaluation of objective and subjective factors before reaching a conclusion as to the overall risk.

27. Evaluation of risk for a particular case is made in the following context:

(i) Risk management for lodgment or collection occurs in a statutory framework. Those responsible for securing lodgments or collecting debts must not make risk decisions that may contravene the statutory framework.

(ii) Decisions on risk are also subject to policy considerations and one should avoid decisions which may contravene the policy.

(iii) Risk assessment is based on objective and subjective facts and logical inference, and not on rumour or innuendo. A risk assessment must be reasonable, having regard to the circumstances at the time it was made. Historical facts and current data will carry more weight than future conjecture.

(iv) Responsibility for providing relevant information to enable assessment of the risk lies solely with the taxpayer (although the ATO will also make use of information to which it has access or which it has obtained). If taxpayers are uncooperative or decline to provide all necessary information to enable appropriate decisions to be made, adverse inferences can be drawn and these may influence the decision made.

28. It is incumbent on decision makers to ensure that risk decisions are:

- authorised under relevant legislation
- within their authorised/delegated powers
- based on and consistent with established policy
- based on the particular circumstances of a case

- properly reasoned
- properly documented and reviewed at appropriate intervals.

29. It must be recognised that there is no one correct answer for dealing with outstanding returns and statements or debts. Different circumstances require different remedies and different people will make different decisions about what steps to take to secure lodgment or recover an outstanding debt based on their particular evaluation of the facts and circumstances applying to a particular case.

How the risk is evaluated

30. There are three essential elements to risk evaluation in the lodgment and collection contexts:

(i) the risk - using the most cost-effective method of lodgment or recovery and determining if and when the return/statement will be lodged or the debt will be paid. Allied to this are the implications of not pursuing the return/statement or debt and the cost of undertaking alternative courses of action

(ii) the risk probability - using all available information and the compliance model to determine whether the outstanding lodgment obligations or debt are likely to escalate and whether lodgment or payment is likely to occur and when, and

(iii) the risk exposure - determining the extent of any loss to the revenue that could result and the risk of being seen to encourage non-compliant behaviour. The loss would include the non lodgment of current returns and statements, the information contained therein, the non-payment of current debts, the outstanding amount and the additional charges for late lodgment or late payment/GIC. Coupled with that is the potential for loss of public confidence in the integrity of the tax system.

31. Evaluating risk is a dynamic process. For example, decisions to accept payment of a debt by instalments will need to be reviewed on a regular basis; not only to ensure payments are being made, but also to take account of changes in a taxpayer's circumstances. It could be that the taxpayer may be able to pay the debt in full at the time of review or that further time to pay may be warranted.

32. Risk should be evaluated having regard to all of the taxpayer's relevant circumstances. The cumulative effect of several factors, each suggesting varying degrees of risk, may indicate a more severe risk overall. On the other hand, the high risk inherent in one factor may be totally offset by low or no risk in other matters which are considered.

33. The following list identifies a number of the matters that may need to be considered when evaluating risk:

(i) The total outstanding lodgment obligations or taxation debt.

(ii) The characteristics of the total outstanding lodgment obligation or debt including:

  - whether the outstanding lodgment obligation is escalating or likely to escalate (and whether that is expected to be rapid or more gradual)

- years outstanding (as a general rule, the earlier the year, the greater the risk of not securing it)
- the components of the debt
- how the debt was established (for example, voluntary disclosure, general compliance work, audits into proceeds of crime or ATP)
- whether the debt is escalating or likely to escalate (and whether that escalation is expected to be rapid or more gradual)
- the age of the debt (as a general rule, the older the debt, the greater the risk of not collecting it)
- whether the debt is in dispute (see above)
- whether other creditors are pursuing actions.

(iii)

Taxpayer attributes (attitude, behaviour and circumstances) including:

- previous compliance history (for example, compliance with lodgment and earlier payment requirements, accuracy of returns)
- previous bankruptcy or another form of insolvency administration (including multiple bankruptcies)
- previous corporate delinquency or failure (for example, phoenix activities, disqualification as a director)
- previous participation in, promotion or marketing of ATP arrangements
- previous derivation and/or non-disclosure of income from criminal activities
- capacity to pay
- financial position
- willingness to pay the debt, including efforts made by the taxpayer to borrow funds in order to pay the tax debt

- attitude to lodging expected taxation returns and statements and paying expected taxation debts. (It may be appropriate to draw adverse inferences about taxpayers who have given priority to acquiring personal assets ahead of paying their taxation liabilities. Taxpayers who appear to ignore their financial responsibilities and live beyond their means tend to represent a higher risk)
- steps taken by the taxpayer to ensure future lodgment obligations are met and future liabilities are paid as and when they fall due
- income and expenditure (that is, whether income is steady, fluctuating or seasonal; whether the level of expenditure can be considered to be reasonable; and whether there is any excess of income over expenditure)
- whether the taxpayer has been denied credit or further credit
- whether other creditors are being paid in preference to the ATO
- the level of cooperation provided by the taxpayer and the timeliness of any proposal that is made
- the truthfulness of the taxpayer (for example, whether the taxpayer has been candid in dealings with the ATO and whether the taxpayer's assertions are supported by documentation)
- commercial considerations, such as where a taxpayer faces a tight liquidity situation because stock is turning over slowly or because a major debtor has delayed payment of an account
- the nature of any undertakings that may have been given to other creditors, whether secured or unsecured
- any commercial advantage to the taxpayer that deferral of payment or non-payment of taxation debts generates
- the contents of any lodgment or payment proposal (including whether the proposal is legal and would benefit the ATO to a greater extent than alternative available actions)
- the cost of the proposal relative to the cost of alternatives.

(iv) The stage which the lodgment or recovery process has reached at the time a proposal or request is made and the cost of varying, terminating or staying that process.

(v)

Relevant policy issues.

(vi)

Relevant information about the taxpayer or the taxpayer's activities that may be held by the ATO.

(vii)

Any reports on the taxpayer's financial affairs that may have been obtained, including insolvency practitioners' reports.

(viii)

The existence of any impediment to the ready recovery of a debt (for example, where the taxpayer's assets are overseas and no asset is held in the jurisdiction or where the taxpayer has equitable interest in assets legally owned by other associated entities).

34. The compliance model clearly links risk with the indicators of unwillingness to comply with taxation obligations. While individual circumstances must be considered in each case, due regard needs to be given to any steps taken by the taxpayer to mitigate the risk. The following activities are considered to indicate the highest levels of risk:

- promotion of ATP activities including schemes
- participation in activities designed to avoid payment of an assessed or probable debt for example, multiple bankruptcies and phoenix activities
- participation in criminal activities
- continued participation in ATP activities including schemes
- continued participation in other contrived or artificial activities designed to avoid or reduce assessment.

35. In this context 'continued participation' means:

- continuing to participate in the ATP activity after the ATO view is advised to the taxpayer or their agent
- participation in more than one ATP activity.

36. In considering whether a taxpayer's participation in more than one aggressive tax planning activity constitutes the highest level of risk, due regard must be given to the level of mischief associated with the arrangements.

Making a risk decision

37. The management of risk involves making decisions in a statutory and policy framework, which means:

- all taxpayers will be treated professionally, equitably and fairly

- the ATO will form its own opinions on risk based on an impartial review of the facts and then respond to the risk (taxpayers can expect each case to be considered on its merits)

- taxpayers can expect the ATO to apply the most severe measures and sanctions in response to the highest level of risk in accordance with the compliance model

- taxpayers cannot expect the ATO to agree to any particular course of action on the basis of past actions or decisions. The ATO will assess risk based on current circumstances

- taxpayers can expect the ATO to make use of any or all available lodgment compliance/debt collection options, including prosecution and the bankruptcy/liquidation option. The fact that negotiations are taking place over payment of a debt or that a debt is disputed does not automatically preclude the ATO from taking action to secure the debt by appropriate means (for example, judgment, security over property, injunctions, or issue of "garnishee" notices as defined elsewhere in this policy)

- responding to changes in taxpayers' circumstances which, upon an evaluation of the risk to revenue, may warrant a decision to take action that could involve costs exceeding revenue collected (for example, action designed to ensure outstanding lodgments or debts do not escalate or action to support the integrity of the tax system)

- the decision taken in response to the risk evaluation must be commensurate with the perceived risk; rather than to 'reward' or 'punish' taxpayers for their action or inaction concerning the lodgment of their tax returns and statements and payment of their tax debts, and

- evaluating risk is not an isolated task. All relevant facts need to be considered and, where appropriate, other ATO areas should be consulted.

It may not be possible to consider every aspect of a taxpayer's circumstances before making a risk decision. ATO staff dealing with lodgment or debts should focus on the major risks (rather than the insignificant risks) that determine capacity to meet taxation obligations.

Minimising risks to the ATO/risk avoidance

38. Risk management is not focused solely on addressing perceived or real risks. It also requires an exercise of caution to ensure that the ATO's position is not put at risk by certain actions, for example in making comments or taking actions on matters unrelated to the lodgment of returns, or statements which cause the taxpayer to have certain expectations; or otherwise creating a situation which could cause the taxpayer confusion, loss or damage. These actions may create new risks.

39. In reviewing a taxpayer's records, or in making enquiries to establish facts to determine the risks inherent in the case and the most cost effective lodgment compliance action or recovery method, tax officers involved in the receivables management process will frequently see or hear comments that suggest that the taxpayer's situation (and, perhaps, the tax debt itself) arose through the actions, inaction or negligence of another person. In these circumstances, tax officers should not lose sight of the need to apply professional standards. These standards include refusing to express comments on issues outside their expertise. For example:

-

Tax officers involved in the receivables process are not financial counsellors and therefore, should not provide financial advice. If it is apparent that a taxpayer may benefit from financial counselling, that may be suggested to the taxpayer as an option for consideration.

- Tax officers involved in the receivables process should not express views to taxpayers which suggest that the taxpayer's circumstances arose through the negligence of others. Any assertions by the taxpayer along these lines should not be discussed, apart from suggesting that the taxpayer discuss the matter with their solicitor.

- If the taxpayer claims that their taxation return is incorrect, tax officers involved in the receivables process should refer the taxpayer to *TaxPack* or to their tax agent. If a taxpayer raises the issue of negligence by their agent or enquires about their rights against the agent, they should be advised to contact the Tax Practitioners Board. Tax officers should not discuss whether the taxpayer's tax agent erred or displayed negligence in completing the return.

Documenting the decision

40. It is important that decisions and the reasons for making the decisions be properly documented in the case management system and the paper file (where appropriate) to:

- enable the decision to be quickly reviewed at a later date if the need arises or if circumstances change

- provide background information to any other officer who subsequently deals with the taxpayer so as to assist their decision-making

- provide an audit trail

- enable a ready response to any approaches/complaints by the taxpayer or the taxpayer's representative, and

- enable any legal challenge, including a request for review under the *Administrative Decisions (Judicial Review) Act 1977* , to be dealt with effectively and efficiently.

Reviewing the decision at appropriate intervals

41. Risk management is an on-going process while a taxpayer's payment and/or lodgment obligations remain outstanding. Changes to the economic climate or to the particular circumstances of the taxpayer may give rise to a different level of risk which necessitates a different approach. Accordingly, regular reviews of any risk decision is paramount to ensure that the appropriate sanctions prescribed by the compliance model are being implemented based on the taxpayer's willingness and or ability to comply at any given point in time.

Date of Issue: 14 April 2011

Date of Effect: 14 April 2011

Subject References:
Risk analysis & management

Legislative References:
Administrative Decisions (Judicial Review) Act 1977
Bankruptcy Act 1966 188
Judiciary Act 1903 39B

Related Practice Statements:
PS CM 2007/02 (internal link only)
PS LA 1998/1
PS LA 2009/9
PS LA 2011/7

Authorised by:
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American Institute of CPAs
1455 Pennsylvania Avenue, NW
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April 25, 2011

Ms. Heather Maloy
Commissioner
Internal Revenue Service
Large Business and International Division
Mint Building
801 Ninth Street, NW
M4-313
Washington, D.C. 20001

RE: Comments on Schedule M-3 with the Objective of Reducing Burden and Duplication

Dear Ms. Maloy:

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to provide our preliminary comments relative to Schedule M-3, ***Net Income (Loss) Reconciliation***. As the national professional association of certified public accountants comprised of approximately 370,000 members, the AICPA is well positioned to comment on Schedule M-3. Our members prepare income tax returns that include Schedule M-3 for thousands of corporate and partnership taxpayers, advise taxpayers regarding Schedule M-3 reporting, and review returns of those taxpayers that prepare their own returns that include Schedule M-3. Based on our members' significant experience with the Schedule M-3, we offer the following comments of a technical nature, as well as our views regarding the level of burden on taxpayers and practitioners, and suggestions for change.

Purpose and Development of Schedule M-3

Schedule M-3 was developed by the Internal Revenue Service (IRS) and Department of the Treasury (Treasury) to replace Schedule M-1 for certain business filers, with a view towards increasing transparency and standardization in the reporting of book to tax differences. It was first required to be filed by certain corporations filing Form 1120 for tax years ended December 31, 2004. Subsequently, that initial Schedule M-3 served as a model for developing unique Schedules M-3 for certain corporations filing Forms 1120-S, 1120-PC, and 1120-L, certain partnerships filing Form 1065, and certain foreign corporations filing Form 1120-F. Reporting requirements were further expanded by requiring additional detail for certain Schedule M-3 filers on Forms 8916 and 8916-A, and for all Schedule M-3 filers on Form 1120 (Schedule B) and Form 1065 (Schedule C). We use "Schedule M-3" in this letter to refer generally and collectively to all these filing requirements, unless otherwise specifically noted as to a particular form or schedule.

Role of External Stakeholders

IRS and Treasury used a collaborative approach in developing and expanding Schedule M-3, enlisting stakeholders, such as AICPA, for their review of the Schedule M-3 concepts and the various draft schedules and related instructions, comments on the estimated burden that would be imposed on taxpayers and their advisers, and suggestions for change. Announcement 2010-75, released in September 2010 with other Schedule UTP guidance, announced the creation by IRS of a working group to study and revise Schedule M-3, and stated that the group would work with external stakeholders to develop appropriate revisions to Schedule M-3. The AICPA is pleased to be asked once again for our input as IRS considers revisions to Schedule M-3.

Request for Meeting of IRS and External Stakeholders

The AICPA believes that IRS, Treasury and external stakeholders found the collaboration for the initial design and expansion of Schedule M-3 to be enlightening and productive, and believes that similar collaboration would be useful in its revisions of Schedule M-3. In the interest of time, we include below some initial comments and suggestions for revisions. Consistent with previous collaboration efforts, we recommend that IRS meet with stakeholders soon to discuss in more detail Schedule M-3 and taxpayer burden and duplication. Such a meeting might then lead to the formation of a smaller working group that can address specific revisions to Parts I, II, and III of Schedule M-3.

Request for Current IRS Use of Schedule M-3 Data

As the AICPA develops additional data for such future meetings and discussions with IRS, it would help us in focusing our comments and suggestions if IRS would provide us with information regarding how IRS and Treasury are currently using the data from Schedule M-3. For example, it would be helpful to know how the Large Business and International Division (LB&I) is using Schedule M-3 data to help select returns and issues for examination, one of the primary purposes of Schedule M-3.

Examination Experiences

The AICPA understands and supports the IRS objective of increasing the transparency, certainty, consistency, and efficiency of the tax compliance process. The Schedule M-3 concept of standardization to support risk assessment assumes that all filers consistently understand the IRS's interpretation and apply often ambiguous instructions. Our collective experiences suggest this may not be a valid assumption.

Taxpayers were told that their examination burden would be reduced through the IRS's use of data gathered by Schedule M-3. Our collective experiences, however, indicate that there has been little change in the examination approach for those taxpayers outside of the Compliance Assurance Program (CAP), with examiners still requesting complete book to tax detail for all general ledger accounts. Anecdotal evidence suggests that some examining agents are of the view that Schedule M-1 was more useful because it provided more detail descriptions of the book to tax differences, aligned to taxpayers' general ledgers, and on a general ledger account-by-account basis the audit was simpler to manage and audit trails were easier to document. Further, some examining agents have expressed to taxpayers their opinion that the separate-company Schedules M-3 in a consolidated return are not useful. In such cases, we find the examiner only looks at the consolidated Schedule M-3 and, typically does this review only at a cursory level for activity outside the "other items with differences." This is usually followed by an Information Document Request (IDR) for the detail of the book to tax differences in the Schedule M-3 lines for "other items with differences."

Increased Reporting Burden and Duplication

Many taxpayers incur a significant amount of extra return preparation time related to properly reporting column (a), ***Income (Loss) or Expense per Income Statement***, of Parts II and III. The majority of taxpayers' general ledger income/expense accounts do not map directly to the 60+ categories for this column, resulting in the need for manual reclassifications and adjustments, for example, when a single account must be disaggregated to show two or more amounts on different lines of Schedule M-3. In addition, many accounts which may initially be automatically mapped by the tax preparation software to the appropriate line may then have to be manually adjusted to comply with the Schedule M-3 instructions; for example, to reclassify and aggregate amounts related to a reportable transaction, or for accounts in which there are no book to tax differences which must be reclassified and aggregated in Part II, line 28, all of which can only be determined after the return is substantially complete. Since a separate Schedule M-3 is required for each corporation, this analysis and resulting adjustments must be made for each corporation in a consolidated return, as well as reviewed and analyzed at the consolidated level.

Similarly, many taxpayers spend extra time during tax return preparation because of column (d), ***Income (Loss) or Deduction per Tax Return***, of Parts II and III, which duplicates information found in other parts of the return. For example, taxable income computed via column (d) of Schedule M-3 (Form 1120) must agree with taxable income before net operating loss (NOL) and special deductions reported on Form 1120, page 1, line 28. Ensuring that taxable income totals agree requires some additional time. Many taxpayers must then spend significant amounts of additional time to reconcile individual line items, such as interest income, which appropriately, but perhaps not understandably, may be different between Schedule M-3 and Form 1120, page 1. For example, a Schedule M-3 filer reports interest income from a partnership on Form 1120, page 1, line 5, ***Interest***, but does not include this same amount in ***Interest Income*** on Schedule M-3, Part I, line 13. Instead, this amount must be combined with other partnership items and included in either line 9 or 10 of Schedule M-3, Part II, depending on whether it is from a U.S. or foreign partnership. Such differences must be reconciled, explained, and documented, requiring additional time which yields little, if any, added value.

Taxpayers that report cost of goods sold on Schedule M-3, Part II, line 17 must spend significant additional time providing supporting data in Part I of Form 8916-A, ***Supplemental Attachment to Schedule M-3***. There is substantial variation regarding how taxpayers interpret the instructions and, as a result, the level of detail provided for book and adjustment amounts. It appears that the information is not being used by IRS examiners.

Each of the above highlight some of the areas that taxpayers perceive as increased administrative and reporting burden resulting from Schedule M-3. With reduced resources, increased time pressures, not understanding why the book data is needed, and the perception that IRS does not use such data, a taxpayer might place a higher priority on properly calculating, reporting, and paying the final tax liability than it places on making presentational reclassifications and adjustments on Schedule M-3.

We also find that some of the supporting data requested by the Schedule M-3 instructions for various lines might more appropriately be requested by an examiner through an IDR. For example, a new line, ***Research and development costs***, was added to the 2010 Schedule M-3. The requested supporting data appears to be the data used by IRS to audit the research credit. Obtaining data through the Schedule M-3 for risk assessment regarding the research credit might more appropriately be handled through a targeted question, on Schedule B (Form 1120). This new line is another example of increased burden imposed by the Schedule M-3 in terms of the additional amount of time that a taxpayer will incur to obtain the amounts to report in column (a), as most taxpayers do not separately report “book” research expenditures.

Revisions/Eliminations to Certain Schedule M-3 Lines

We question the addition of new reporting requirements for the Schedule M-3, such as the new line added for research and development (R&D) expenditures, at a time when many practitioners and taxpayers question the continued usefulness of the Schedule M-3 in light of the Service’s request for reporting of uncertain tax positions (UTPs). While the IRS has recently provided a frequently asked question (FAQ) on its website which attempts to provide a simplified procedure for reporting R&D expenditures on Schedule M-3, we nevertheless believe this new R&D line expands the original purpose of the Schedule M-3, rather than reducing duplication and burden. Thus, despite the FAQ, we recommend elimination of the R&D cost expenditures line.

There are several additional line items in Parts II and III, for example ***Items related to reportable transactions***, that we suggest be eliminated or revised, and will provide additional comments and details after we complete further analysis. Line items that were of some import to Treasury and/or IRS at the time Schedule M-3 was designed are no longer significant today, for example, because of fewer taxpayer reportable transactions or because IRS has developed other ways to obtain the information, such as Schedule UTP. Different line items, or additional questions, may now be more helpful for IRS risk analysis.

Initial Suggested Revisions to Schedule M-3

The AICPA will provide further recommendations in future correspondence. However, as our initial reply to the IRS request, and based partially on the above discussion, we suggest that the following Schedule M-3 revisions be considered:

- Eliminate required completion of columns (a) and (d) of Parts II and III of Schedule M-3
- Eliminate and revise certain lines on Parts II and III of Schedule M-3 (more detail will be provided through future communications)
- Revise supporting detail required for certain lines in Parts I, II and III of Schedule M-3 (more detail will be provided through future communications)

- As an alternative to revising Parts II and III, replace them with an expanded Schedule M-1 that would be used by all business taxpayers
- Eliminate Form 8916-A
- Expand the use of Schedule B (Form 1120) and Schedule C (Form 1065) for risk assessment in lieu of adding new lines and requesting additional supporting detail on Schedule M-3 (e.g., eliminate the R&D expenditures line from Schedule M-3, Part III, and replace it with a useful question on Schedule B/C)
- Allow a consolidated group of corporations that all file Form 1120, but that also includes one corporation that files a Form 1120-PC, to file as only a Form 1120 consolidated group, and not as a "mixed" group, that otherwise requires sub-consolidations and Form 8916, ***Reconciliation of Schedule M-3 Taxable Income with Tax Return Taxable Income for Mixed Groups***

The AICPA looks forward to continuing our discussions with IRS regarding Schedule M-3 and hopes that a meeting can be arranged soon. Please feel free to contact Linda S. Gurene, Chair of the AICPA Schedule M-3 Task Force, at linda.gurene02@ey.com, or (210) 242-7231; Benson S. Goldstein, AICPA Senior Technical Manager, at bgoldstein@aicpa.org, or (202) 434-9279; or Michelle R. Koroghlanian, AICPA Technical Manager at mkoroghlanian@aicpa.org, or (202) 434-9268.

Sincerely,

Patricia A. Thompson

Patricia A. Thompson, CPA
Chair, Tax Executive Committee

cc: Ms. Deborah Palacheck, Senior Advisor, Internal Revenue Service, Large Business and International Division

TAX EXECUTIVES INSTITUTE, INC.

July 7, 2011

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: *Comments on Schedule M-3 — Reducing Burden and Duplication*

Dear Commissioner Shulman:

Upon release of the final version of Schedule UTP, *Uncertain Tax Position Statement,* for 2010, the IRS announced the creation of an internal working group to study and revise the Schedule M-3, *Net Income (Loss) Reconciliation for Corporations with Total Assets of $10 Million or More.*[1] The Announcement explains that "the implementation of Schedule UTP is likely to reduce the need for some of the information currently reported on the Schedule M-3."[2] The IRS working group is expected to work with external stakeholders to develop revisions to Schedule M-3.

As the preeminent association of in-house business tax professionals worldwide, Tax Executives Institute (TEI) appreciates the opportunity to submit comments on the burdens and utility of Schedule M-3. Our approximately 7,000 members represent 3,000 of the leading corporations in the United States, Canada, Europe, and Asia. Members of TEI are responsible for managing the tax affairs of their companies and must contend daily with financial and tax reporting requirements — and the differences between them captured and reported on Schedule M-3 — arising from the operation of business enterprises. TEI represents a cross-section of the business community, and is dedicated to developing and effectively implementing sound tax policy, to promoting the uniform and equitable enforcement of the tax laws, and to reducing the cost and burden of administration and compliance to the benefit of taxpayers and government alike.

Purpose of Schedule M-3

Schedule M-3 replaced Schedule M-1 for certain Form 1120, *U.S. Corporation Income Tax Return,* filers, effective for tax years ended December 31, 2004. The initial Schedule M-3 was subsequently used as a

[1] Announcement 2010-75, 2010-41 I.R.B. 428.

[2] *Id.* at 431.

model for similar schedules for partnerships filing Form 1065 and corporations filing Forms 1120-L, 1120-PC, and 1120-S. A special Schedule M-3 applies to foreign corporations filing Form 1120-F.

Schedule M-3 provides the IRS with information about corporation and partnership financial statements (hereinafter "book income") and reconciles the differences between book income, losses, and expenses and tax income, losses, and deductions. Schedule M-3, Part I, identifies the source of book income, and reconciles the financial reporting entity to the tax reporting entity by listing the affiliated entities that are included in the financial reporting entity but not in the consolidated tax reporting entity (and vice versa). Part I of the form also asks questions about a corporation's or partnership's financial statements; reconciles financial statement net income (loss) to the corporation's or partnership's net income for the U.S. group.; and reconciles worldwide assets and liabilities of entities included for financial statement purposes but not the tax return (and vice-versa). Schedule M-3, Parts II and III, require disclosure of amounts for selected "tax-sensitive" book items; disclosure of related permanent and temporary book-to-tax differences for the items; and shows the income, loss, or deduction amount per the filer's Form 1120 (or 1065). Some Schedule M-3 filers (principally life and property and casualty insurers) must also file Form 8916, *Reconciliation of Schedule M-3 Taxable Income with Tax Return Taxable Income for Mixed Groups*. Finally, Form 8916-A, *Supplemental Attachment to Schedule M-3*, may be required to report additional detail on costs of goods sold, interest income, and interest expense. Unless the context requires otherwise, the comments in this letter are directed to the forms collectively as "Schedule M-3."

In developing Schedule M-3, the IRS and Treasury Department reached out to stakeholders, including TEI, for input on the schedule's design, instructions, and potential burdens. TEI was pleased to participate and commends the IRS for working collaboratively with stakeholders to review the utility and burdens of the Schedule. The Schedule is now "seasoned" by several years of compliance and examination experience, so a review of the burdens and utility is timely, especially with the introduction of Schedule UTP.

To develop its recommendations, TEI chartered a task force of members to share both their expertise in the compliance burdens spawned by Schedule M-3 and their experience with how agents employ the schedule as an examination tool. Members of the group would be pleased to meet with the IRS working group to elaborate on our comments and recommendations.

Schedule M-3 Reporting Burdens

A. *Implementation.* The primary challenge in implementing Schedule M-3 is mapping book income accounts to produce column (a), *Income (Loss) or Expense per Income Statement*, of Parts II and III of the schedule. This mapping may vary from the mapping required to produce other lines or forms in the return. Indeed, for most taxpayers, very few general ledger accounts for income or expense will map directly to the lines or categories in column (a) of Parts II and III of Schedule M-3. As a result, significant time was required, whether by tax department personnel or outside vendors, to review and map each account. Since nearly all Schedule M-3 filers must e-file their returns, the data entry requirements to produce the form depends on the tax software used. In many cases, new book accounts (or sub-accounts) were created in order to disaggregate book amounts and map specific transactions or amounts to different lines of column (a) in Parts II and III. In other cases, manual workarounds (*e.g.*, spreadsheet-based worksheets) were developed in order to make the required reclassifications to arrive at the column (a) amount and to ensure that related book-tax differences were also mapped to the correct lines of columns (b) and (c).

Quantifying the direct costs for the initial implementation of Schedule M-3 reporting is difficult. Companies that outsource tax return preparation often have fixed-fee arrangements so the incremental costs of implementing Schedule M-3 were unavailable. Some taxpayers reported an increase in their license or consulting fees for the implementation and subsequent tax year(s), but the portion directly attributable to Schedule M-3 preparation is not available.[3] Companies that undertook mapping their general ledgers to the tax compliance software to produce the new Schedule M-3 reported that personnel from several departments, but most often the tax department, spent many hours on the exercise. One small company, for example, devoted one third of its total tax department personnel for two weeks, and some personnel for up to four weeks, to map the general ledger. A larger company with 170 subsidiaries, multiple general ledgers, and multiple enterprise resource planning (ERP) systems, required between five and six weeks' time from a significant portion of its tax department to complete the initial mapping. Although the costs of company tax department, general accounting, and information technology personnel are frequently part of corporate overhead costs — and thus difficult to quantify incrementally — every taxpayer represented in our task force concurred that the exercise imposed significant burdens requiring a redirection of many work hours from compliance, reporting, or other tax-related activities.

B. *Ongoing Compliance Burdens*. On an annual basis, the burden of complying with Schedule M-3 depends on the scope of revisions to a taxpayer's charts of accounts or the Schedule M-3. The "internal" reconciliation of Parts II and III, column (d), *Income (Loss) or Deduction per Tax Return,* to other lines (or forms) of Form 1120 is also a source of additional burdens.

i. <u>Charts of Account</u>. Many taxpayers have charts of accounts that run a hundred pages or more. While many but not all accounts are standardized across business units (or lines of business), the business units (and thus the general ledger accounts) are not always organized by legal entity. Indeed, there can be multiple general ledgers (or business divisions) within a single entity or even general ledgers that overlap legal entities. Moreover, every business unit will customize its accounts to reflect the industry, transactions, and businesses processes and practices. Hence, every year, the tax department must review every new account added or deleted by the accounting department(s) for every business unit (and legal entity) to ensure proper mapping of the general ledger accounts to the lines on each of the forms in the tax return (Form 1120, Form 4562) as well as to column (a) of Parts II and III of Schedule M-3. One taxpayer described the process as a surely not unique source of continuing friction between the

[3] Indeed, no taxpayers reported decreases in consulting fees following the implementation year.

tax and accounting departments since the tax department will frequently request the addition of new accounts in order to disaggregate accounts to better map transactions to individual lines of the tax return forms, especially the M-3. Regrettably, even where new tax-sensitive general ledger accounts are created, the tax department must monitor accounting department entries and often make myriad reclassification adjustments to the accounts (as reflected in the tax compliance software) or create supplemental spreadsheets to develop the corrected Schedule M-3 column (a) starting point.

One small company with six entities reported that one third of its department spends one to two days per year reviewing the charts of account and updating the mapping of the general ledger to the tax compliance software (or supplemental spreadsheets) for Schedule M-3 alone. Larger companies (100 or more entities) reported that several persons spend one to two weeks reviewing and revising account mapping related solely to Schedule M-3 requirements. One large company with 700 entities estimated that 750 to 900 hours per year are required to review and revise the mapping of general-ledger accounts for preparation of Schedule M-3.

In addition to ordinary course (or operational or day-to-day) accounting needs, another source of changes to a group's charts of account are acquisitions and dispositions of businesses, whether by asset or stock purchases. Regardless of whether the acquired company retains its preexisting chart of accounts or converts its accounting system to the acquiring company's chart of accounts, the tax department must ensure that the acquired company's accounts map to the acquiring company's tax compliance software. The burden of implementing the Schedule M-3 reporting for the acquired company is equivalent to a new Schedule M-3 implementation because there are rarely economies of scale or automated processes for the general ledger mapping exercise. Each account and line must be analyzed and mapped to ensure the totals (actually, multiple subtotals and totals arising from the requirements of different tax forms) tie out. Thus, considerable time is devoted to integrating acquired businesses into a consolidated group's Schedule M-3 tax return reporting.

ii. Changes to Schedule M-3. Any change to the Schedule M-3 form inevitably requires significant taxpayer effort to review and remap book accounts to the tax compliance software (as well as any supplemental spreadsheets or other manual workaround solutions prepared to supplement the tax compliance or examination processes). For example, recently the IRS revised Schedule M-3 to require reporting of research and development (R&D) related expenses on a separate line from the rest of Part III columns (a) and (d). The revision to break out "R&D costs" on line 35 of Part III column (a), combined with the additional requirement to provide a detail schedule by functional expense for the aggregate amount reported, was extremely burdensome for companies reporting R&D. Indeed, there is such a significant difference between amounts reported as R&D expenditures in the financial statements, section 174 R&D expenses, and costs qualifying for the research credit that considerable compliance time was already spent grouping "R&D costs" from multiple general ledger accounts. The Schedule M-3 reporting change exacerbated the compliance challenge.

Indeed, whenever Schedule M-3 changes, it is not just the new line that requires scrutiny. Every account from which book income or expense is reclassified must be reviewed and remapped and totals for all accounts before and after the reconfiguration must be compared to ensure that no account is duplicated or omitted. Moreover, the related book-tax differences must also be remapped for purposes of reporting on the M-3 since the calculation of the book-tax difference is a separate process for each account. As important, for most taxpayers the calculation of the book-tax difference (*i.e.*, the old Schedule M-1 amount) is generally separate from how amounts are reported on the Schedule M-3.

iii. Reconciliation of Parts II and III, column (d) *Income (Loss) or Deduction per Tax Return*, with other lines (forms) of Form 1120. Every taxpayer expends significant amounts of additional time in tax compliance for every entity and for the consolidated group as a whole to complete column (d) of Parts II *Income (Loss) per Tax Return,* and III, *Deduction per Tax Return*. The total on Schedule M-3, Part II, line 30, column (d), must reconcile with taxable income before net operating loss deductions on Form 1120, page 1, line 28, for each entity as well as the consolidated group. Moreover, since column (d) of Parts II and III must reconcile with other lines of Form 1120 (mostly page 1, but also other schedules such as Form 4562, *Depreciation and Amortization*, and Form 4797, *Sales of Business Property)*, taxpayers spend significantly more time reconciling individual line items.

One of the more vexing challenges is reconciling taxable income from partnership interests with lines on Form 1120. For example, interest income from a partnership is reported on line 5 of the Form 1120, but that amount is combined with other partnership items and reported on lines 9 or 10 of Part II of Schedule M-3. Hence, line 13, column (d) of Part II of Schedule M-3 *never* agrees with line 5 of the 1120. As a result, while taxpayers rely on the tax compliance software to ensure the amounts reconcile, they must often develop supporting schedules each year (or during examination) to prove that the amounts reported by the partnership are indeed as reported by the corporate partner. Even more elaborate and time-consuming reconciliations are required to tie out the amounts for gains and losses from property reported on lines 23(a)-(g) of Part II of Schedule M-3 and related lines 8 and 9 of Form 1120 and Form 4797. None of the reconciliation schedules is necessary for the proper determination or examination of a taxpayer's tax liability because they are prepared solely for reconciling lines on the Form 1120 (or detail form) with the Schedule M-3. The various reclassifications to reconcile between the M-3 and other lines neither add assurance nor serve as an internal control over the proper determination of the book and tax differences, which is the core activity in determining the proper amount of taxable income and tax liability.

iv. Miscellaneous Burdens from Schedule M-3. Other redundant reporting burdens imposed by Schedule M-3 include:

- The required "white paper" supporting detail for Part I, lines 5(a) and 7(a) of Schedule M-3, duplicate the information reported on Forms 5471.

- Part I of Form 8916-A duplicates the information reported on Form 1120, Schedule A, relating to Cost of Goods Sold. Moreover, there is considerable room for interpreting the information requested on lines 2(a) to (n), as well as lines 3 to 5 of Form 8916-A. More important, the information provided on the form does not seem to be used by examiners.

Examination Experience

When Schedule M-3 was being developed, taxpayers were told that it would provide the IRS with a window to assess the compliance risk in tax returns. Specifically, standardized reporting of book amounts (column (a)) and book-tax differences (in columns (b) and (c)) was intended to provide visibility into returns and help the IRS select taxpayers and issues for examination. As a result, taxpayers, especially those under continuous examination, held reasonable expectations that they would face reduced examination burdens.

Regrettably, few or no taxpayers report realization of the expected examination efficiencies or reduced cycle time.[4] Indeed, despite the standardized lines of column (a) in Parts II and III, there remains significant variation among taxpayers in mapping their general ledgers to the various lines on Schedule M-3. Indeed, even within the same industry, taxpayers may use different book accounting methods and thus will not account for the same transaction in the same way. Hence, even with the same reporting lines for column (a) on Parts II and III of Schedule M-3, the IRS may not be able to develop a standardized mechanism for return and issue selection.

Following the implementation of Schedule M-3, examination teams have generally taken one of two examination approaches. Under the first approach — hereinafter the "modified Schedule M-1 examination" — examiners request the detailed working papers for the permanent and temporary differences reported in columns (b) and (c) of Parts II and III of Schedule M-3. Prior to the introduction of Schedule M-3, taxpayers had longstanding methods to compute and track the book and tax differences in their general ledger accounts. Those accounting procedures and processes were generally left undisturbed by the introduction of Schedule M-3 because the process to produce the book and tax differences is tried and true. More important, the audit trail generally ties directly to the general ledger with far fewer of the reclassification "hoops" that taxpayers must jump through to produce Schedule M-3. During examinations, agents will look at the Part I reconciliation and may, in limited cases, ask for reconciliations between column (d) of Parts II and III of Schedule M-3 and other lines of other forms of the tax return. The bulk of the examination is spent confirming the workpapers computing and summarizing the book tax differences in columns (b) and (c).

Where agents employ a modified M-1 examination approach, the purpose and uses of much of the required Schedule M-3 information (including Form 8916A supplemental information), especially columns (a) and (d), is unclear if not irrelevant. Moreover, taxpayers report that agents who follow this approach complain that it is far more difficult to track traditional book-tax differences. The taxpayer-produced Schedule M-1 generally provided a more detailed description of the book-tax difference, aligned with the general ledger, and

[4] To be sure, taxpayers in the Compliance Assurance Process (CAP) program report significant examination efficiencies but even CAP taxpayers believe that excessive time is devoted to explaining Schedule M-3 reclassifications and reconciliations.

generally required fewer steps (reclassifications, especially) to reach the tax return amount and related book-tax difference amount. In effect, the audit trail is easier for taxpayers to produce and for examiners to follow. The Schedule M-3, however, requires taxpayers to map first to the column (a) book amount, which in many cases requires significant numbers of reclassifications from other accounts. The related book-tax difference must also be remapped and the audit trail requires further checking and cross-checking to ensure that all related amounts tie out to the lines on Schedule M-3.[5]

The second examination approach employed by agents post Schedule M-3 consists of highly detailed scrutiny of the Part II and III column (a) amounts as well as detailed reconciliations of every column (d) amount with every line of the tax return. In these examinations, the book-tax differences in columns (c) and (d) of Parts II and III may be examined, but the time spent on the column (a) amounts is, in most taxpayers' experience, unusual and *disproportionate* to the task of examining *tax* compliance. In effect, examiners are spending considerable time auditing and verifying *book income* amounts and tracing the path of every item from the general ledger through various reclassifications to their ultimate destination on Schedule M-3. This level of scrutiny is unnecessary, especially since large taxpayers have significant internal controls to ensure the integrity of the book amounts. Moreover, for most taxpayers the book amounts and the internal controls have already been examined by the company's independent accountants.

Although the IRS cannot draw systemic conclusions from anecdotal evidence, one CAP taxpayer's experience is illustrative of the challenges that remain. The agents on the case expected every single asset with a book-tax depreciation difference to be accounted for separately in its Schedule M-3 detail. For example, if the book life for an asset was 15 years and the tax life was 5 years, each such asset could be grouped together for the column (a), Part III amount, but assets could not be grouped if there were a different book or tax life. In addition, where the difference in the book-tax amounts was attributable to a basis difference (*e.g.*, carryover or substituted basis for tax versus a fresh start or fair market value for book or vice versa) the agent expected a separate book account and M-3 detail line. In other words, the agents

[5] Schedule M-3 was developed and released at the same time that the IRS implemented its Modernized e-File (MeF) system. Because of the limitations of the MeF system, taxpayers are required to file a "stacked" return, *i.e.*, a separate return and Schedule M-3 for each includible corporation, with a consolidating Schedule M-3. The requirement to aggregate all business divisions into a single entity and the inability to use a columnar format for the separate general ledgers (and legal entities) that feed into the book amounts and tax differences exacerbates the audit challenge. In response to the IRS workgroup's question F about improving the consolidation and sub-consolidation processes, one taxpayer described the return preparation and audit challenges, as follows:

> Prior to M-3, we prepared our Schedule M-1 on a divisional basis consistent with how the books are maintained. Now we must do Schedule M-3 on a legal entity basis. This requires much time to consolidate divisions into legal entities. Our legal entities generally consist of a number of divisions, each of which has a separate set of books and separate accounting system. Preparing book-tax differences based on the way the books are kept is simple and leaves a good audit trail. Prior to Schedule M-3, when we prepared Schedule M-1 the white paper attachments in the return contained each book-tax difference by reporting entity with separate books. This made it very efficient for an IRS auditor to spot book-tax differences and to ask for more information since a particular Schedule M-1 item could be easily traced to a set of books.

expected the column (a) book amount for the depreciation line on Schedule M-3 to be broken into as many components as might be required to account for each applicable code section creating a basis or depreciation difference, or as might be required to report different book and tax lives. Regrettably, the "book" calculation for the depreciation of many assets may be based on entirely different assumptions, amounts, and calculations that may not correlate directly to a "book" amount for a particular asset's tax depreciation calculation (*e.g.*, leased assets). As a result, most taxpayers maintain (and most agents accept) that the depreciation differences must be determined by examining and comparing the tax and book fixed asset ledger details. This particular agent seemed to believe that all the differences should, in effect, be captured and reported on a Schedule M-3 supplemental schedule (or "white paper" detail).

Regardless of which examination approach is used, there is a consensus that the introduction of the Schedule M-3 has not produced the promised examination efficiencies or reductions in audit cycle time. Indeed, there is a sense that examinations are either less focused — seeking detailed reconciliations between Schedule M-3 column (d) and lines on other forms (especially page 1 of Form 1120) — or focused on the wrong things, such as verifying in minute detail the "book" amounts for column (a) of Parts II and III.

Recommended Revisions to Schedule M-3

The introduction of Schedule UTP suggests that Schedule M-3 has not fully achieved its goals of increasing transparency, efficiency, and consistency in tax reporting.[6] Moreover, given our members' reported examination experiences, we are uncertain about the utility of Schedule M-3 as a risk-assessment diagnostic tool. Because Schedule UTP substantially duplicates the purpose of Schedule M-3,[7] the IRS should consider abandoning Schedule M-3 as the Schedule

[6] IR-2004-14, January 28, 2004, included the following statements from Treasury Department and IRS officials about Schedule M-3's purposes and intended effects:

> "The proposed Schedule M-3 will make differences between financial accounting net income and taxable income more transparent. This will help agents determine from the return whether the return should be audited and identify the differences that matter most in the audit of the return. We see benefits to taxpayers and the IRS from the new Schedule: a reduction in unnecessary audits and a swifter focus on those differences that are more likely to arise when taxpayers take aggressive positions or engage in aggressive transactions. In addition, the increased transparency will have a deterrent effect," stated Treasury Assistant Secretary for Tax Policy Pam Olson.
>
> "The new Schedule will let the IRS sharpen and improve monitoring of corporate compliance," said IRS Commissioner Mark W. Everson. "Our objective is to identify and resolve potential audit issues promptly. This information will help us do so."
>
> "These changes will enable us to focus our compliance resources on returns and issues that need to be examined and avoid those that do not," said Deborah M. Nolan, IRS Large and Mid-Size Business Division Commissioner. "Increasing the transparency of corporate tax returns is critical to our objectives to provide certainty to taxpayers sooner and to improve overall compliance."

[7] In prepared remarks on April 12, 2010, before Tax Executives Institute's 60th Midyear Conference in Washington, D.C., Commissioner Shulman said the goals of Schedule UTP are to:

UTP process evolves and the IRS and taxpayers become familiar with the use of Schedule UTP as a disclosure and risk-assessment tool. Schedule M-3, Part I, of course, provides a useful top-down summary from the consolidated financial statements to the consolidated group's net income per the tax return. (Even before Schedule M-3 was introduced, many IRS examination teams requested such reconciliations.) Hence, although Part I should be streamlined (*e.g.*, by eliminating the requirement for detailed "white paper" schedules for lines 5-7 with the return), it should likely be retained even if the rest of the form were eliminated.

Since the questions posed by the IRS workgroup suggest that the IRS may not be ready to abandon Schedule M-3, we offer the following suggestions for reducing taxpayer burdens and, we believe, increasing the Schedule's utility.

- *Replace Schedule M-3, Parts II and III with a more flexible Schedule M-1 format.* We question whether the individual lines of Parts II and III add anything of value to the IRS examination process. The 38 lines of each Part (including the subparts of Part II, lines 23 and 29), in effect, require taxpayers to disaggregate and re-aggregate their accounts and *create* books and records (general ledger accounts or subaccounts) *solely* to facilitate completion of a tax schedule. Rather than compel taxpayers to report their book accounts and related tax differences by shoehorning all the amounts into specified lines, taxpayers should be permitted to use broader financial statement classifications or other natural starting points for columns (a)-(d). For example, taxpayers should be permitted to use Sales, Cost of Goods Sold, Selling General & Administrative, and interest income and expense for column (a) as they do in their financial statements.[8] The differences reported in columns (b) and (c) for Parts II and III to reconcile the amounts to taxable income might still be classified as either permanent or temporary differences. The column (d) amount would be the net tax amounts for the broader groupings but should *not* be expected to reconcile to specific tax return lines or forms.[9] As with Schedule M-1,

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- create certainty sooner for taxpayers;
- cut down the time it takes to find issues and complete an audit, which benefits both the IRS and taxpayers;
- ensure that both the IRS and taxpayer spend time discussing the law as it applies to the facts, rather than looking for information;
- help IRS prioritize taxpayers for examination;
- help IRS prioritize selection of issues during an audit; and
- obtain key information regarding uncertain tax positions without getting into the heads of taxpayers or their advisors, as it relates to quantifying risk.

[8] Many taxpayers must comply with SEC reporting requirements and thus have adopted XBRL reporting categories for their book income amounts. Such taxpayers may prefer to use those categories as the starting column.

[9] There are certain line items on column (d) of Parts II and III that *never* agree with amounts on page 1 of Form 1120. Agents routinely request the production of burdensome reconciliation spreadsheet schedules to confirm what the tax compliance software may not produce directly. Several taxpayers reported agents requested the details about how the taxpayer's compliance software produced the amounts reported on the Schedule M-3. In one case, the software vendor said that it would provide the detail only if all persons with access to proprietary software code signed a nondisclosure agreement and agreed to destroy the data upon conclusion of the examination. In another case, the vendor acknowledged that the requested details could be produced as long as the taxpayer purchased an

however, the total taxable income in Part II, column (d), should reconcile to taxable income before net operating loss and other special deductions (*e.g.*, line 28 of Form 1120 or the related line on other forms). In addition, taxpayers should be able to produce detailed book and tax differences that align with their general ledgers.

- *Eliminate Form 8916-A, Supplemental Attachment to Schedule M-3.* This form requires detailed breakout of Cost of Goods Sold, Interest Income, and Interest Expense. The Form requires taxpayers to create sub-account upon sub-account to capture the book amount starting point in order to reach the taxable income end point. More important, the schedule duplicates Form 1120, Schedule A.

- *Eliminate or Significantly Reduce the Number of Required "White Paper" Schedules Supporting Schedule M-3 Lines.* The Schedule M-3 requires taxpayers to provide supporting data for many lines of the Schedule M-3. It is unclear why these so-called white paper schedules should be supplied with the tax return since the process for identifying and accounting for book and tax differences for many accounts is different and generally separate from the Schedule M-3 process. The details are almost always requested on examination so it is unclear what purpose is served by including them with the filed return. In other cases, the detailed white paper schedules duplicate information included elsewhere in the return, For example, lines 5a and 7a of Part I require white paper schedules that duplicate the information reported on Forms 5471.

- *Eliminate Lines Relating to Reportable Transactions.* Reportable transactions must be separately disclosed in the tax return. In addition, Schedule UTP will likely provide additional information about reportable transactions. It is unclear why amounts relating to reportable transactions should be separately identified and reported on Schedule M-3 when other, more direct disclosures of such high-risk transactions are required in the return. Complete details about reportable transactions, including book and tax differences and the general ledger sources are routinely requested by examiners and can be supplied on examination.

- *Eliminate the New Line for Reporting R&D Expenditures.* Some taxpayers use a cost-center approach while others use a project-by-project approach in accounting for R&D expenditures and qualifying costs for the research credit. Because of the myriad differences in company accounting practices, we believe the IRS would be better able to assess the tax risks of qualifying R&D activities by asking targeted questions on Schedule B of Form 1120 rather than requesting detailed numbers on the tax return. The detailed numbers can be, and under the Tiered-Issue examination approach always are, requested and supplied on examination. Indeed, depending on the taxpayer's accounting approach, IRS agents will likely employ different procedures and craft different information document requests to verify a taxpayer's credit claims. As a result, little is gained by compelling taxpayers to report R&D expenditures on Schedule M-3.

"add-on" software component. Although the IRS is likely legally entitled to obtain such information under a section 7612 summons, the examination experience demonstrates the additional burdens that the schedule engenders.

- *Update the MeF System to Permit More Flexible Reporting.* The MeF system, which requires taxpayers to file a "stacked" tax return with a separate Schedule M-3 for each legal entity, requires taxpayers to consolidate divisional general ledgers (as well as book and tax differences for each ledger) into the aggregate amounts reported on Schedule M-3. The consolidation of separate division ledgers into entity amounts leads to many book amounts (column (a) of Parts II and III of Schedule M-3) and book-tax differences (columns (b) and (c) of Parts II and III) being aggregated in a fashion that impairs the efficient examination of the taxpayer's books. Although a recommendation to revamp the current MeF reporting, *e.g.*, to permit attaching larger PDF files with separate divisional columns, may nominally be beyond the scope of the IRS workgroup, the IRS should consider *how* information is provided as well as *what* information is required.

Conclusion

Tax Executives Institute appreciates the opportunity to present its recommendations for potential changes to Schedule M-3. We would appreciate the opportunity to meet with the IRS working group and provide additional details or respond to questions it may have. In the interim, if you have any questions about the submission, please do not hesitate to contact Eli Dicker or Jeffery P. Rasmussen of the Institute's legal staff at 202.638.5601 or edicker@tei.org or jrasmussen@tei.org.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

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INTERNAL REVENUE SERVICE
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SMALL BUSINESS/SELF EMPLOYED SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Small Business/Self-Employed Subgroup (hereafter "Subgroup") consists of six tax professionals from wide-ranging backgrounds. Its members include attorneys, certified public accountants, certified payroll professionals, U.S. Tax Court practitioners, and enrolled agents serving the tax system in public practice, education and in private industry. The Subgroup's membership reflects the broad range of taxpayers served by the SB/SE Division of the Internal Revenue Service (hereafter "SB/SE").

The Subgroup enjoys a close working relationship with the professionals within SB/SE. The relationship has granted this subgroup the opportunity to consult with SB/SE leadership on many issues over the past year. The Subgroup and SB/SE consulted both formally and informally on all of the issues contained in this report.

The Subgroup respectfully recommends the following three actions relating to the three issues raised in this report:

1. **Strategies to Increase Use of Online Payment Agreements**

   SB/SE management asked the Subgroup to recommend strategies for increasing taxpayers' use of Online Payment Agreements (OPAs). Although OPAs are significantly more efficient for the IRS and for the taxpayer, less than 3 percent of those eligible utilize it. We recommend leveraging the practitioner community more through specific outreach steps, creating a one page flyer for distribution, and adding OPA instructions to tax software.

2. **Modifications to Notice CP2030**

The IRS has recently introduced Notice CP2030 to communicate to businesses that there is a discrepancy between information reported by third parties and the business' annual income tax return. This notice is the business counterpart to CP2000 which is used to identify discrepancies between IRS Form 1040 tax return and third party information returns. The Subgroup recommends modifying these forms to more clearly identify taxpayer options by changing the first page to summarize the issue, list steps for resolution, highlight both the deadline for response and the consequence of no response, by changing the layout to clarify the tax assessment is proposed and not a final assessment, and by highlighting the ability to authorize the IRS to discuss the information with an authorized party.

3. Strategies to More Fully Utilize Technology for Stakeholder Outreach

The IRS has asked IRSAC to provide feedback and options for enhancing outreach to stakeholders through technology by leveraging our experience in the private sector and association relationships. We recommend better coordination with stakeholder groups' communication teams and when a meeting is not face to face, stakeholders be able to preview the discussion topic and utilize technologies that facilitate more interaction.

ISSUE ONE: STRATEGIES TO INCREASE THE USE OF ONLINE PAYMENT AGREEMENTS

Executive Summary

The members of IRSAC were asked by the IRS to provide suggestions to expand awareness of the Online Payment Agreement (OPA) function so it would have greater usage among tax professionals and individual taxpayers.

When taxpayers owe the IRS and are unable to pay their outstanding liability, a taxpayer can make payments over a specified time period utilizing an installment agreement. In the past, obtaining an installment agreement typically involved significant interaction with the IRS and disclosure of taxpayer's personal financial information. The OPA was developed to allow taxpayers, who meet the appropriate criteria, to establish an installment agreement online at IRS.gov. Of the more than 3.1 million total installment agreements created in FY 2012, less than 3 percent (92,519) used the OPA to enter into an installment agreement.

Background

There are many ways that taxpayers can pay the IRS, including paying the debt in full or making installment agreements to pay the debt over time. Installment agreements are generally paid either by check or by direct debit out of the taxpayer's checking account. An installment agreement can be requested by using Form 9465, Installment Agreement, or over the telephone by speaking with an IRS assistor.

The OPA is designed to assist individuals who owe a balance of $50,000 or less. We understand that certain system enhancements will be effective March 2014, including making businesses qualifying taxpayers.

To use the online application, an individual must have filed all tax returns and be able to pay the total amount within 72 months. Payments can be made using a payroll deduction agreement, under which an employer withholds the payment from paychecks and sends it directly to the IRS, by direct debit of the taxpayer's bank account or by check. Direct debit is required if the amount owed is $25,001-$50,000, while taxpayers who owe $25,000 or less can make their monthly payments by check. The OPA can also grant a full pay agreement of up to 120 days, change payment due dates and/or amounts on existing agreements, and change an existing agreement to or from payroll deduction or direct debit. Prior to the OPA, these types of changes had to be done with personal contact with the IRS. This is an inefficient use of IRS resources and inconvenient for the taxpayer.

Recommendation

IRSAC recommends that the IRS increase marketing efforts and leverage its existing outreach programs to taxpayers and tax professionals. The IRS should highlight the specific benefits of the OPA for each group (e.g., ease of use, taxpayers are not required to reveal sensitive financial information to the IRS, and the IRS does not file a Notice of Federal Tax Lien when the OPA is used by the taxpayer to establish a payment agreement), so tax professionals can comfortably recommend that their clients use the OPA.

The following recommendations focus on outreach to taxpayers:

1. The IRS should prepare a one-page flyer that can be used to educate taxpayers, preparers and stakeholders on the benefits of using OPAs. A sample flyer is attached to this recommendation.
2. The OPA flyer and current video should be updated to reflect the enhancements available in March 2014 and the increased benefits of using the OPA should be highlighted on IRS.gov.
3. The IRS should include the OPA flyer with notices and bills sent to qualified taxpayers who meet the application criteria. In addition, the OPA URL at IRS.gov should be prominently displayed on all relevant notices, bills and other correspondence whenever a balance of $50,000 or less is due.
4. The IRS should prominently display the OPA process and application at the IRS.gov website, especially during the months of March and April when qualified taxpayers are most likely seeking ways to pay their current year tax obligation.
5. The IRS website should display the Online Payment Agreement Application at the top of the Payments page (as of 8/12/13 it was listed at the bottom, after U.S. Residency Certification Fees), which allows the list to more closely resemble the potential topic usage. The OPA information is also listed under Tools (as the last item in the first column), but since the current video shows this placement, it should only be changed with updated video presentations to avoid confusing taxpayers.

6. The IRS should investigate whether it is possible to make the OPA available to taxpayers 24/7.
7. The instructions on the OPA site should be updated. Section 2 of the OPA, “Gather Your Information,” directs the taxpayer to “obtain their Caller ID number, shown at the top of your recent notice.” However, the OPA is available even before a notice is generated. This instruction should be revised to indicate that this step is optional.
8. The phone numbers listed on the OPA website for assistance should be updated to include those who are knowledgeable about the OPA website, and IRS representatives should be more fully trained on the program. Currently, when users have issues with the OPA site, the screen instructions direct the user to call 1-800-829-1040 or 1-800-829-0994 x684. However, when calling either of these numbers, an IRS representative advises how to do an installment agreement or filing the Forms 9465, Installment Agreement Request and Form 443-D, Installment Agreement. The representatives do not offer assistance with the OPA, state they have no knowledge of the OPA, and give instructions that are in direct contradiction with the qualifications for using the OPA (i.e. if the balance is over $25,000 then an installment agreement can’t be done online).
9. IRS.gov should be hyperlinked to the IRS Video that shows taxpayers how to use the OPA. We recommend that the language be changed from “Learn more about the Online Payment Agreement Application “ to “Watch this video to learn more about the Online Payment Agreement Application“.

The following recommendations are focused on outreach to tax professionals:

1. The IRS should provide information about the OPA to the various tax professional groups (e.g., American Institute of Certified Public Accountants, National Association of Enrolled Agents, National Society of Accountants, and National Association of Tax Preparers) and request that they share this information with their members in newsletters or at their conventions or educational events to increase awareness. The information can also be shared during existing outreach programs (e.g., IRS Nationwide Tax Forums and Stakeholder Liaison meetings). Communications should focus on highlighting the OPA's advantages and recent changes in direct debit payment requirements. In addition, the flyer can be disseminated electronically to the stakeholder groups and meeting organizers so it can be distributed to their members and those attending the outreach meeting; this allows the stakeholder groups to manage the flyer copying and distribution.
2. The IRS can increase marketing efforts during the January through April filing season using IRS tweets, e-News for Tax Pros, e-News for Small Businesses and other messages that are focused on Wage & Investment and Small Business/Self-Employed taxpayers who are most likely to use this option.
3. The IRS should request software developers include information about the OPA when the taxpayer has a balance due. This payment option can appear in software used by taxpayers who self-prepare and those used by tax professionals. Most tax software contains system-generated diagnostics or

recommendations that identify items that may have been missed by the preparer or taxpayer. When the return indicates a balance is due, most software suggests payment options including credit card or electronic methods. The OPA should be listed as a possible alternative on the software-generated payment diagnostics.

4. When the IRS notifies employers of its intent to garnish a specific employee's wages or the IRS notifies banks and financial institutions of its intent to levy a taxpayer's account, the one-page OPA flyer should be included. Although this would create additional costs for the IRS, if this added step reduces the number of levies issued, (which is labor intensive and costly for the IRS, and also increases the number of delinquent taxpayers who are now paying their back taxes), then this recommendation will result in an overall cost savings. Typically, large employers and banking institutions do not offer tax advice, however, they can tell an affected person where to obtain information. By sharing this IRS OPA flyer with employers and banking institutions to provide to qualified taxpayers whose wages are in the process of being garnished or whose bank accounts are in the process of being levied, they are providing a resource for the taxpayer to find appropriate tax guidance for their situation without offering tax advice.

5. Part of the IRS's current marketing plan includes a webinar for the 2013 filing season. This webinar should be updated annually, and an hour of continuing education credit can be granted for completing questions at the end of the webinar.

IRS

ONLINE PAYMENT AGREEMENTS

(OPA)

- ✓ **Are you an individual who owes the IRS $50,000 or less in tax, penalties and interest and can't pay it?**
- ✓ **Is the IRS about to garnish your wages or levy your bank account?**
- ✓ **Can you pay what you owe in 6 years (72 months)?**
- ✓ **Have you filed all your tax returns?**

You, or an authorized representative, can likely apply for an installment agreement online (OPA).

- **It's fast, easy and secure.**
- **You do not have to call or talk to the IRS.**
- **You only provide very limited financial information.**
- **Your request can be approved within minutes.**
- **Depending on how much you owe, you may not be required to use direct debit for payments.**
- **You can make payment arrangements even before the IRS sends you a notice.**
- **The IRS will not file a lien if you are using a payment agreement.**
- **You pay less interest the faster you pay what you owe.**
- **Even if your debt is old, you may still be able to use OPA.**

Get started at http://www.irs.gov/Individuals/Online-Payment-Agreement-Application

1 Determine your eligibility...

2 Gather your information...

3 Submit your application!

ISSUE TWO: MODIFICATIONS TO NOTICE CP2030

Executive Summary

The CP2030 is a new form, modeled after the current AUR/CP2000, used to communicate with business taxpayers that data reported by third parties on information returns does not appear to be properly reflected on the entity taxpayer's income tax return. IRSAC was asked to assist the IRS by reviewing this new form. Similar to the CP2000, the CP2030 is a proposed assessment that has specific implications for future actions with the IRS. Because they serve a similar purpose and SB/SE taxpayers are often recipients of the CP2000 notice due to differences in Schedule C reporting and 1099-Misc reporting, our recommendations and comments also include references to Form CP2000. The CP2030 (and similarly the CP2000) could be modified to be less adversarial by clarifying that the taxpayer may disagree with the proposed changes. IRS notices must be understandable, complete and reflect the Internal Revenue Code (IRC), but modifications can increase tax compliance by promoting more productive discussions between taxpayers and the IRS.

Background

The IRC requires a number of information returns to be filed by businesses making payments to taxpayers. The IRS matches this data with information reported by taxpayers on annual income tax returns. If amounts do not appear to be properly reported, the IRS notifies taxpayers that there is a discrepancy and proposes a tax assessment as a result of adjustments to income, deductions or credits. Although individuals may receive a soft notice prior to receiving a CP2000 on their individual tax return, this is not the case with entity tax returns. The CP2030 is often the first communication that an entity taxpayer receives from the IRS. Recently enacted legislation requiring reporting by credit card companies has increased the third party information reporting received by the IRS and will increase the notices with all types of taxpayers about discrepancies on tax returns.

It is important that taxpayers understand these forms and the actions they can take to resolve the discrepancies. While IRSAC believes that the forms are generally clear in stating that the IRS will assess the proposed tax unless the taxpayer takes certain actions, the notice language could be revised to more clearly indicate that taxpayers can correct the reported information by communicating with the IRS. Currently the top of the notice states the amount due and due date in bold, large font. The notice states, “As a result, you owe $X,XXX.XX, which you need to pay by DATE.” Careful reading of the full notice reveals that this is a proposed assessment with which the taxpayer can disagree; however, this requires astute attention to detail that very few taxpayers engage when they receive an IRS notice. The suggested modifications would increase a taxpayer’s understanding of alternative courses of action, provide better service to taxpayers and enhance compliance with our voluntary tax system.

IRSAC commends the IRS for publishing Frequently Asked Questions (FAQs) regarding this form as this increases the public’s understanding of alternative courses of action. However, FAQs should not be viewed as an alternative to making modifications to the form.

<u>Recommendations (note that some of these recommendations apply to both the CP2000 and the CP2030)</u>

1. In general, the notice should advise the taxpayer that the assessment was generated by comparing income reported by third party payers and that the IRS document matching may not result in proper assessment and taxpayers have the right to disagree with IRS proposed changes. We reviewed a sample Form CP2030 and recommend the following specific changes:
   a. The bold lettering stating an amount due and due date should be eliminated.
   b. The initial communication of information includes the sentence "As a result, you owe $X,XXX (including interest), which you need to pay by DATE." This sentence should be revised to read "If this information is correct, you owe $X,XXX (including interest), which you need to pay by DATE to avoid future interest charges and possible penalty assessments."
   c. Language on the CP2030 "Billing Summary" should be changed to language used in the CP2000's section entitled "Summary of Proposed Changes."
2. In the CP2030 "What you need to do immediately" section, we recommend the following:
   a. There are two alternative courses of actions described depending on whether the taxpayer agrees with the changes or disagrees with the changes proposed by the IRS. The first alternative discussed is the actions

needed if the taxpayer agrees with the changes. To better communicate that taxpayers can disagree with these proposed changes, the first course of action discussed should include the actions required if the taxpayer does not agree with the changes. This includes contacting thrid party payees for corrected documents, identifying the line an income item was reported on, etc.

b. A third course of action should be included to explain how an extension of time to respond can be obtained, noting that interest, if due, will continue to accrue from the original due date until payment is made.

c. Final flush language should repeat the information at the top of the notice that provides a phone number to contact to discuss the notice.

3. In the “If we don’t hear from you” section, we recommend the following:

    a. The first clause should be modified to read “If you do not respond or provide additional documentation such that we receive it by DATE…..” The current language does not convey that a taxpayer may wish to provide documentation for some of the items listed, agree with some of the items, and start a dialogue regarding other items. The notice should be clear that the taxpayer has the right to disagree with some or all of the proposed changes and clarify the steps the taxpayer can use to provide the IRS with information about the proposed changes.

    b. It is important to continue to prominently display the deadline for communication and note that failing to meet this deadline could result in additional interest and possible penalties.

4. In the Response form under the “1. Indicate your agreement or disagreement” section, we recommend the following:
    a. A bullet states that the entity can challenge these changes in the U.S. Tax Court only if the IRS determines after the date the form is signed that additional taxes are due. While taxpayers are precluded from pursuing a claim for this assessment in Tax Court, there are other judicial processes open to the taxpayer and this should be clarified.
    b. The notice should clarify that agreeing to the tax assessment does not preclude the IRS from examining this or other items on the return or the taxpayer from later amending the return.
    c. The taxpayer is directed to fax documentation to a specific number. Because faxing is no longer a common form of communication, other means of providing documentation (e.g., first class mail, email, overnight delivery services) should be discussed.
5. The Response form should provide a section that the taxpayer can use to authorize individuals other than the addressee to discuss the information in this notice with the IRS.
6. Although the sample CP2030 we reviewed did not have the “enclosed envelope” that is indicated in the notice and the IRS address was sanitized, we recommend that the IRS addresses on the notice be consistent. The address in the upper left corner on page 1, the addresses on the response form, and the enclosed envelope should be consistent. Recognizing that any enclosed envelope will likely get separated from the letter, that taxpayers don’t generally understand the

importance of the various IRS addresses, and that taxpayers rarely notice there are several different addresses on a letter, the CP2030 should limit the likelihood that taxpayers send a response to the wrong address.

7. The first page of the CP2030 should contain appropriate summary information to allow an entity taxpayer to direct the correspondence to the appropriate internal individual at the company. Business owners rarely perform a detailed review of every letter they receive. Instead, they scan the letter and determine who in the organization should respond. The current CP2030 summarizes the taxpayer's obligations, but does not emphasize key issues in a summary format on page 1 with the details to follow on subsequent pages.
8. Consistent with IRSAC 2010 recommendation regarding the AUR/CP2000, we recommend that the IRS acknowledge receipt of taxpayer information and state that additional communication will not be sent until after the taxpayer's response has been reviewed.
9. Although IRSAC understands that these notices are used for different types of taxpayers, we recommend that CP2000 be modified to reflect the type of summary information used on the CP2030 including the "Summary of Proposed Changes," "What you need to do immediately," and "If we don't hear from you." The current CP2000 format is confusing to most taxpayers; using a revised layout similar to the proposed CP2030 may make it easier for the taxpayer to understand the notice and clarify what actions are required.

ISSUE THREE: STRATEGIES TO MORE FULLY UTILIZE TECHNOLOGY FOR STAKEHOLDER OUTREACH

Executive Summary

The IRS has asked IRSAC to provide feedback and options for enhancing outreach to stakeholders through technology by leveraging private sector and association experience. Over the last decade, professional associations, software companies and employers have changed the way training is delivered to maintain participation as cost and workload requirements make it difficult to devote significant time to training out of the office. The cost of sending employees to multiple off-site sessions and the time away from client work must be balanced with the need for employees to improve their knowledge and perform well in their jobs. The private sector has been able to significantly decrease on-site instructor led training (ILT) sessions and with limited resources, the IRS should expand its virtual educational outreach initiatives where feasible, concentrating on more interactive training.

Background

The IRS currently utilizes a variety of tools to conduct educational outreach including social media outlets, web-based applications for video-conferencing and online meetings, DVDs, conference calls, podcasts, widgets, and subscriptions. [Exhibit A] Many of these tools are also available in Spanish. These outreach tools are utilized by the IRS in addition to its more traditional educational initiatives that include working with partners and participation in face-to-face (F2F) meetings such as forums, conferences and training programs.

With significant restraints on both human and financial resources, finding alternate lower cost, efficient and effective ways to disseminate information in a clear and concise manner is extremely important to promote taxpayer compliance. In 2012, the IRS conducted a number of outreach and educational events that included small business tax workshops and industry and practitioner seminars, payroll and practitioner meetings, small business forums, internal meetings and other industry events.

Taxpayers and the IRS have a mutually beneficial interest in increasing and promoting both training and education. Although both play a vital role in assisting taxpayers with their tax compliance obligations, there is a distinct difference between training and education. Typically, training is conducted to explain a specific process or procedure or teach a person how to accomplish a task. Training may easily be accomplished by providing picture tutorials in a variety of fashions (e.g., on-demand video, podcast video, YouTube, DVD, etc).

Alternatively, education is used to provide examples, explain concepts, share a full-picture view, relate the effects of the topic on other areas that need to be considered, and help the recipient learn how to operate in a more efficient and effective manner. Depending on the length and complexity, education initiatives may be better delivered F2F during an ILT session, though there are certainly times when other, less costly, methods are equally effective.

As commonly utilized in business, the IRS should consider adopting the following methods for either education or training conducted on a regular basis:

ILT/F2F: Typically, this type of training is used for the most complex/complicated topics or where material will cover three or more hours of time; F2F meetings are also used to build relationships. Uses of ILT/F2F include certification test preparation and multifaceted topics, such as handling the Affordable Care Act (ACA) requirements or other complex tax changes. Advantages of ILT/F2F include: building relationships; giving the IRS a human face; enabling participants to have questions answered; creating a channel for the IRS to receive constructive feedback from participants, the ability to review materials which have been distributed electronically before the meeting; broadcasting throughout the country; and encouraging remote participants to use social media (Twitter, Facebook) to send in questions. The IRS has knowledgeable employees with strong speaking skills who can serve as ambassadors to promote IRS positions and policies. Disadvantages include costs for event space and setup, printed materials and travel costs.

ILT webinar: Typically, this type of training is used for information distribution, explaining new laws and enhancing compliance through reinforcement of existing rules, processes and procedures. It is best used for sessions that are less than three hours. These types of sessions are most useful when they allow participants to interact with each other and the speaker. An ILT webinar can be recorded with or without video. For smaller groups, participants can share information during the presentation, as controlled by the presenter. Larger sessions could utilize more than one presenter or both a presenter and an administrator; participants can write their questions and the second presenter or administrator can review, consolidate as applicable, and provide the questions to the presenter for short Q&A every 15-20 minutes throughout the training. Sessions that need to limit the number of participants due to technology limitations, should be offered multiple times during a relatively short time frame (i.e., 5 sessions over a 2-week period). There are both free web-sharing sites as well as free 800# conference call services. ILT webinar sessions may also be recorded for future use as on-demand content. The major disadvantages are limited bandwidth for many participants and using video can slow the presentation or disconnect participants.

On-Demand: As recorded content, this is best used for sessions no longer than 90 minutes where content is not complicated. This method can explain concepts, guidelines, or assist with forms completion. Material can be made available in an offline mode for viewing. The major advantages are that this can be viewed at will, viewed multiple times, and the content can be saved for future reference. Smaller bits of content are more easily accessible and more likely to be remembered by the participant. The major disadvantage is that if the material cannot be downloaded to a local machine, internet access must be available for the entire viewing time.

YouTube: This tool is helpful for demonstrating how to do something. For example, YouTube can be utilized to show taxpayers how to connect with the IRS on Facebook, Twitter, Tumblr, etc. with tips on how to reach the appropriate IRS channels.

DVDs: Similar to on-demand or YouTube content, DVD content made available as on-demand and YouTube can also be made available on DVD. This is a perfect way to communicate with those who don’t have a solid internet connection but who either have an optical reader for their computer or a DVD player available.

Podcasts: Can be utilized as video or just audio. If video is not available, this is best used for simple concepts and training, including reinforcement or review of subject matter previously distributed as ILT or On-Demand. Like YouTube, podcasts can be used to give instruction on how to connect with the IRS via social media.

Social Media: This method is best for announcements and news, and it can also be used to direct taxpayers to the right training opportunities to meet their needs.

As with any business decision, careful consideration must be given to the various challenges and issues inherent in selecting from the education and training mediums available. The following situations should be considered during the decision making process:

1. The cost to create, update and deliver training content on a regular basis. Once content is created, it may need to be updated for recent tax law changes.
2. Determine what content can be used for multiple years with minor changes due to date or index adjustments (standard deduction, personal exemptions, mileage rates, etc.) versus training that has a shorter lifespan.
3. Determine what method is best used for any given piece of information that needs to be publicized.
4. Timing of participant workloads such as quarter-end, year-end and month-end need to be considered when planning ILT/F2F training to fit the participant audience. For example, payroll-related topics are best done Wednesday-Friday as Monday and Tuesday are usually the busiest time for payroll. Tax professionals are busy meeting deadlines in March, April, September and October. Evaluate

whether the IRS can improve its marketing efforts with current technology such as electronic newsletters, social media, etc.

5. A large segment of taxpayers may lack understanding or availability of technology.
6. Taxpayers may lack an understanding of or be reluctant to use certain types of social media or technology, such as Twitter and Tumblr.
7. The difficulty in finding information without a direct link.
8. Privacy concerns about “tracking” information searched and viewed, (e.g., what information, if any, will be gathered and kept on file by the IRS).

Recommendations

1. Create a list of available content and current method of delivery along with a list of new content that needs to be developed.
2. Increase awareness that the IRS provides newsletters and uses social media on a daily basis. All social media is promoted in various e-news subscriptions, but not everyone is aware of e-news subscriptions. More awareness could be accomplished by changing the IRS.gov homepage to place e-news subscriptions information in a prominent place; currently, the link does not exist on the home page. The IRS can explain e-news benefits in the quarterly SSA/IRS Reporter. We recommend the IRS provide a calendar or list of upcoming events in the SSA/IRS Reporter. The IRS can also use other regularly scheduled newsletters, generally available to all businesses, to promote various methods available to receive information.

3. Use Rich Site Summary (RSS) feed as a means of deploying just-in-time outreach in addition to current methods of newsletters, Twitter posts, etc.
4. Market to and educate the audience on where/how to find information on various education and training opportunities. In addition, provide quick-tips and links to tips and FAQs on how to find, use and navigate various social media tools like Tumblr. We recommend displaying this information more prominently on the IRS.gov home page. Currently, the social media link on the home page is a short video in Spanish; we recommend adding content in English. We also recommend creating a "guide to using social media" and adding it to the 'IRS News Media/ Connect with the IRS' webpage.
5. Allow access to on-demand education via the IRS-to-Go app so that the app links directly to the correct link on IRS.gov. On-demand education and training includes the various methods described previously.
6. Allow all non-ILT webinar content and educational videos from the IRS website to be downloaded directly on to a computer, tablet or smartphone.
7. Conduct a more extensive outreach to public sector organizations, community organizations and other non-profit businesses to provide educational and training seminars. Establish relationships with professional associations, industry groups, social and other organizations to provide content specific training to members, as well as, small business in the local area, especially where ILT/F2F is a good fit. Additionally, we recommend partnering with organizations such as public libraries, community colleges and K-12 community education programs.

8. Place the IRS website as an external link on professional and other related organizations websites to provide individuals with ‘neutral’ places to get the information regarding taxes. We recommend utilizing existing partnerships to accomplish this goal. For example, the IRS could place an IRS external link on a partner’s website to encourage their visitors to visit IRS.gov.
9. Provide timely tools to professional organizations with which the IRS has relationships, so that they may distribute the information to educate their members.
10. Consider making appropriate content available in multiple formats in order to reach audiences who may prefer to receive information or training using different delivery methods.

EXHIBIT A: IRS NEW MEDIA

IRS New Media

Connect with the IRS

The IRS uses social media tools to share the latest information on tax changes, initiatives, products and services. Connect with the IRS through the following social media tools.

IRS2Go
If you have an Apple iPhone or iTouch, you can download the free IRS2Go app by visiting the iTunes app store. If you have an Android device, you can visit the Google Play Store to download the free IRS2Go app.

YouTube
Tune in to the IRS YouTube channels. You can watch short, informative videos in English, American Sign Language and other languages.

Twitter
IRS tweets include various tax-related announcements, news for tax professionals and hiring initiatives.

Tumblr
The IRS Tumblr blog provides current tax information.

Facebook
The IRS Return Preparer Facebook page posts useful information for tax professionals.

Audio files for Podcasts
Subscribe to IRS Podcasts on iTunes or download them from the Multimedia Center.

Widgets
Post IRS widgets on your website or social media networks to help direct others to IRS.gov for complete details on a variety of topics. Get them and other tax products at IRS Marketing Express.

Subscriptions
Sign up for free e-News subscriptions on many topics. This news is delivered straight to your inbox. See which ones you want to join.

Protect Your Identity

At the IRS, privacy and security are paramount. We are using these tools to share information with you. Do not post any confidential information on new or social media sites, especially your social security number or confidential information. Always protect your identity when using any social networking site.

We will not be able to answer personal tax or account questions on any of these sites.

Page Last Reviewed or Updated: 2013-01-08

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- IRS2Go Mobile App

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- IRSvideos in American Sign Language (ASL)
- IRSvideos Multilingual
- Taxpayer Advocate Service

Twitter
- IRS News
- Tax Professionals
- IRS en Espanol
- IRS Recruitment
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INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

WAGE AND INVESTMENT SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC Wage & Investment Subgroup (hereafter "subgroup") is comprised of a diverse group of tax professionals including Certified Public Accountants, Enrolled Agents, educators, general tax practitioners, and persons with financial backgrounds. The members of this group have a wide range of experience in taxation, including both preparation of tax returns and representation of taxpayers. We are honored to serve on the IRS Advisory Council and appreciate the opportunity to submit this report.

The Subgroup would like to thank W&I Commissioner Peggy Bogadi for her recognition of the value of the Subgroup as an integral part of her leadership team. The Subgroup has had the privilege of working with the professionals within the W&I operating divisions of the IRS and found them to be extremely helpful in providing the information, resources, guidance, and IRS personnel necessary to develop our report. We also appreciate the support provided by our designated liaisons who did a masterful job navigating the IRS and ensuring that we had access to the information necessary to develop our analysis and issue our report.

The Subgroup has researched and is reporting on the following three issues:

1**. <u>Reducing Processing time for the Form 2848, Power of Attorney and Declaration of Representative</u>**

The Subgroup was asked to review the process for submitting Forms 2848 to the Service and the form itself to make recommendations for any improvements and modifications. Reductions in processing time and input errors will conserve resources and enhance practitioner interaction with the Service in resolving taxpayer concerns. Our recommendations include development and increased use of electronic processes, and changes to Form 2848 to prevent rejects and resubmissions.

2. **<u>Review the Transcript Request Policy for the Practitioner Priority Service (PPS) Toll-Free Line</u>**

The Subgroup was asked to look at the demand for transcript requests made on the Practitioner Priority Service (PPS) Line, review the current methods in which transcripts are provided by the IRS, and make recommendations on how the PPS Line can be better utilized. Our recommendations include limiting the use of the PPS Line to practitioners covered by Circular 230 and to allow the use of Form 8821, *Tax Information Authorization,* to access the Transcript Delivery System (TDS).

3**. <u>Assisting Tax Preparers Working with Clients that are Victims of Identity Theft</u>**

The Subgroup was asked to provide assistance in developing guidance for tax preparers to assist their clients in working with the IRS to resolve their tax-related identity theft issues. We recommend that the IRS develop checklists and media outreach tools to assist practitioners and taxpayers by advising them how to protect data and work through the IRS process to resolve issues. In addition, the IRS should provide periodic status information to victims.

Furthermore, it is recommended that two issues be included in next year's portfolio. First, the current revised ITIN request process is extremely burdensome for taxpayers, withholding agents, and tax practitioners. The ITIN procedures need to be reviewed to address foreign government documentation along with applicant compliance requirements. Second, the Automated Under Reporter Program should be reviewed to determine if any additional efficiency could be identified to make it an even better compliance program.

ISSUE ONE: REDUCING PROCESSING TIME FOR THE FORM 2848, POWER OF ATTORNEY AND DECLARATION OF REPRESENTATIVE

Executive Summary

The Subgroup was asked to review the process for submitting Forms 2848 to the IRS and the form itself to make recommendations for any improvements and modifications. Reductions in processing time and input errors will conserve resources and enhance practitioner interaction with the Service in resolving taxpayer concerns.

Background

In fiscal year 2012, 3.4 million authorization requests were submitted to the Centralized Authorization File (CAF) Unit. Fewer than 10 percent were submitted electronically, the balance being either fax or hard copy paper submissions. On September 3, 2013, the IRS retired Electronic Disclosure Authorization. Subsequently, all authorization requests will be paper submissions.

Based on recent data, approximately 16 percent of the authorization requests are rejected due to missing or incomplete information. Some of the most common errors are missing taxpayer or representative information; failure to properly sign the form; non-specific tax matter identification; missing Designation, Licensing Jurisdiction or Authority; and failure to attach the prior Form 2848 to retain the previous representation. In addition, it is estimated that 18 percent were duplicates. Duplication occurs when a representative submits a request to the CAF Unit, which has not posted and calls the PPS Line. The assistor will ask for a copy of the POA, which is then faxed to the assistor. Upon concluding the call, the assistor will forward the faxed POA to the CAF Unit.

Recommendations

1. Reinstitute electronic processing of Third Party Authorizations and publicize it as a best practice.
2. Consider using more electronic processing to reduce paper by using e-fax and scanner technology.
3. Require PPS assistors to confirm if the POA has already been faxed or mailed to the CAF Unit. If it has, the POA should not be sent to the CAF Unit. Re-emphasize I.R.M. 21.3.10.2.3 to all appropriate staff or, in the alternative, have the assistor input the Form 2848 directly into the CAF.
4. Develop a check sheet to be used in completing the Authorization Request in order to avoid the most common mistakes and post it on the web.
5. Publicize the web page through practitioner alerts.
6. Modify the Form 2848, Part II, "c" Enrolled Agent to indicate Licensing Jurisdiction should be blank. Also, modify the I.R.M. and other instructions to inform the staff of this.
7. Modify the Form 2848, Part 2 to bold "Check if to be sent notices and communications."
8. Modify the Form 2848 to refer the preparer of the form to the web page for most recent updates.

ISSUE TWO: REVIEW THE TRANSCRIPT REQUEST POLICY FOR THE PRACTITIONER PRIORITY SERVICE TOLL-FREE LINE

Executive Summary

The Subgroup was asked to look at the demand for transcript requests made on the PPS Line, review the current methods in which transcripts are provided by the IRS, and make recommendations on how the PPS Line can be better utilized.

Background

In July 2012, a sample of approximately 500 calls to PPS Line was reviewed. Thirty-two percent of these calls were requests for transcripts only. No other account issues were discussed or resolved. The majority of the transcript-only requests were from three large companies making repeat calls to request the maximum number of transcripts allowed per phone call. These calls are consuming time and resources that could be used to help practitioners with priority account related services. The IRS provides three other methods to request transcripts. They are the TDS, the Income Verification Express System (IVES) and the Return and Income Verification System (RAIVS).

Recommendations

1. Limit the PPS Line to practitioners covered under Circular 230. PPS should issue transcripts for account resolution purposes only.
2. Include a tele-prompt on the PPS Line call menu to direct transcript-only requests to TDS, IVES, or RAIVS.
3. Allow the use of Form 8821, *Tax Information Authorization*, to access transcripts on the TDS system.

4. Improve the POA CAF posting time to make the e-services TDS application more user friendly. (Refer to recommendations offered in Issue One of this report).
5. Create a web-based tool that would make it possible to view and print a transcript online. This tool should include a feature that allows the taxpayer to send a transcript to a third party.

ISSUE THREE: ASSISTING TAX PREPARERS WORKING WITH CLIENTS THAT ARE VICTIMS OF IDENTITY THEFT

Executive Summary

The Subgroup was asked to provide assistance in developing guidance for tax preparers to assist their clients in working with the IRS to resolve their tax-related identity theft issues.

Background

Rampant identity theft is one of the largest challenges for the IRS. In the first half of 2012, the IRS prevented the issuance of $4.2 billion of potentially fraudulent refunds which encompassed 860,000 returns that were indicative of identity theft. The current level of investigation and resolution of cases by the IRS is commendable, especially with the significant budget cuts experienced. Identity theft and refund fraud deplete confidence in the system and create a pervasive problem that the IRS cannot mitigate without working with the tax preparers, taxpayers and other agencies.

Inroads have been made by the IRS, but continued efforts are required to reduce the taxpayer burden and empower the tax preparer community to assist the IRS with detection and prevention similar to the Outreach Referral Program within the banking community. The evolution of the fraudulent schemes remains a challenge, but increasing education and best practices within the tax preparer community will form a conduit to decrease the cycle times of resolution for affected taxpayers.

Recommendations

1. Develop a checklist which details the appropriate procedures to assist tax

professionals in advising taxpayers on the steps they should take to further protect their personal data once they report to the IRS that they have been a victim of identity theft. The form should reinforce the measures that are indicated in the "Taxpayer Guide to Identity Theft" on the IRS website.

2. Develop a "Where is My Case" tracker that mirrors the "Where is My Amended Return" tracker in the form of a status bar available on the IRS website which uses a number other than a Social Security number. This will provide the taxpayer with 1) a support mechanism for getting updates on his/her ID theft case without using Social Security numbers to identify the taxpayer victim and 2) the ability to access touch points prior to case resolution using the standard operating procedure currently in effect of 180 days.
3. Develop and air Public Service Announcements via Public Access TV, Print, Radio and Social Media outlets that encourage and explain preventative steps, practical tips and red flags for possible identity theft activity and its sphere of influence over other personal data using the following best practices as a guide to accomplish objectives:
    a) The Tax Practitioner must use password protection for all client files.
    b) The Tax Practitioner must shred all old files in lieu of regular disposal methods.
    c) The Tax Practitioner must protect PTIN and CAF numbers.
    d) The Tax Practitioner must garner strict access to tax files by outside temporary help.
4. Develop and air Public Service Announcements via TV, Print, Radio and Social

Media outlets that encourage and explain the necessity for tax preparers to demonstrate to the consumer how tax preparation practices and the knowledge of practitioner best practices help to prevent fraud and identity theft. Alternatively, explain unscrupulous practices taxpayers should avoid.

5. Develop a media campaign that markets the IRS website utilizing banner ads on preparer websites of more than 50,000 hits.
6. Develop and monitor data transmissions, electronic tax return filing and fax transmissions and encourage use of encrypted portals.
7. Develop a communications plan to keep practitioners up to date on how to identify issues related to refund fraud and various schemes used by criminals.
8. Extend and expand outreach efforts for the External Leads program to include all businesses that offer financial services and products.

INTERNAL REVENUE SERVICE
ADVISORY COUNCIL

OFFICE OF PROFESSIONAL RESPONSIBILITY
SUBGROUP REPORT

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INTRODUCTION/EXECUTIVE SUMMARY

The IRSAC OPR Subgroup (hereafter "Subgroup") is comprised of a diverse group of tax professionals, including lawyers, CPAs and an enrolled agent. This year the OPR Subgroup has continued participating in the promulgation of new and expanded guidance for practitioners, which was the direct result of recommendations made by the 2011 and 2012 IRSAC.

The Subgroup has always enjoyed a very good working relationship with the Director of the Office of Professional Responsibility and this year was no exception as all the personnel from the Office of Professional Responsibility were extremely cooperative and forthcoming.

IRSAC was asked to provide feedback and recommendations on the following three topics included in this report.

1. **<u>Guidance to Practitioners Regarding Professional Obligations</u>**

   Following up on the recommendation in our 2012 report concerning guidance regarding the obligations of practitioners under Treasury Circular 230, we recommend that the IRS address this guidance as part of a multi-phase project. We also offer a conceptual framework for this guidance at Appendix A.

2. **<u>Treasury Circular 230 Enrollment of Former Internal Revenue Service Employees</u>**

   IRS employees may currently apply to become an enrolled agent (EA) or enrolled retirement plan agent (ERPA) without taking and passing the Special Enrollment Examination. We recommend that all individuals should be required to take and pass the Special Enrollment Examination as a requirement for enrollment as an EA or ERPA.

3. Contingent Fees

Section 10.27 of Treasury Circular 230 permits a practitioner to charge a contingent fee only in limited circumstances. We believe that the current limitation on contingent fees is overly restrictive. We recommend that contingent fees be permitted in all instances where (1) the taxpayer's position is transparent and (2) it is likely that the IRS will examine the taxpayer's underlying claim or amended return.

ISSUE ONE: GUIDANCE TO PRACTITIONERS REGARDING PROFESSIONAL OBLIGATIONS

Executive Summary

Following up on the recommendation in our 2012 report concerning guidance regarding the obligations of practitioners under Treasury Circular 230, we recommend that the IRS address this guidance as part of a multi-phase project. We also offer a conceptual framework for this guidance at Appendix A.

Background

In our 2012 report, we recommended that the IRS develop a publication that enumerates in reasonable detail the obligations of practitioners under Treasury Circular 230 and of "tax return preparers" under the Internal Revenue Code. The purpose of this publication would be to assist the majority of practitioners who attempt to fulfill their professional obligations in good faith. We acknowledged that the development of this proposed publication would constitute a significant undertaking for the IRS.

In light of the scope of this project and the resources that will be required to develop a publication meeting our 2012 recommendation, we believe that the IRS should not attempt to develop guidance in the form of a comprehensive publication as a single project. Rather, we believe that approaching this publication and guidance as a multi-phase project will permit the IRS to provide a basic framework for practitioners and to issue additional guidance on a topic-by-topic basis in the order of their importance to practitioners. Our recommendation includes a conceptual framework at Appendix A for providing guidance to tax practitioners concerning those matters having the greatest importance to practitioners, their clients and the tax system in general.

Recommendation

In furtherance of our 2012 recommendation that the IRS develop a publication enumerating the obligations of practitioners under Treasury Circular 230 and of "tax return preparers" under the Internal Revenue Code, we recommend that the IRS adopt a multi-phased plan to develop this publication and guidance.

Phase 1 would be to provide guidance on the www.irs.gov website consisting of a description of who is subject to Circular 230, a list of key topics, a brief description of the Treasury Circular 230 requirements, and references to relevant authority (*e.g.*, code sections, Treasury Circular 230, Treasury regulations, or publications). As part of our recommendation, we offer a conceptual framework for this guidance at Appendix A.

Phase 2 would involve the development of more detailed guidance concerning the topics identified in Phase 1, as well as other obligations of practitioners and preparers. The order in which the various topics would be addressed should be based on a priority list focusing on those matters having the greatest importance to practitioners, their clients and the tax system in general.

ISSUE TWO: TREASURY CIRCULAR 230 ENROLLMENT OF FORMER INTERNAL REVENUE SERVICE EMPLOYEES

Executive Summary

IRS employees may currently apply to become an enrolled agent (EA) or enrolled retirement plan agent (ERPA) without taking and passing the Special Enrollment Examination. We recommend that all individuals should be required to take and pass the Special Enrollment Examination as a requirement to enrollment as an EA or ERPA.

Background

Treasury Circular 230 has historically provided for a waiver of the Special Enrollment Examination for former IRS employees applying to become EAs or ERPAs. The waiver is provided in §10.4(d), which authorizes the enrollment of former IRS employees based on qualifying past job experience. Qualifying past job experience for EAs is defined as a minimum of five years continuous employment during which time the applicant was "regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and regulations pertaining to income, estate, gift, employment or excise taxes." Qualifying past job experience for ERPA is defined as five years of continuous employment during which time the applicant was "regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and regulations relating to qualified retirement plan matters." Absent the waiver, the examination is otherwise required of anyone applying to be an EA or ERPA.

In December 2009, the IRS issued Publication 4832, the "IRS Return Preparer Review," which stated that taxpayers, tax administration and the tax professional industry would be better served with the implementation of a number of recommended changes, one of which was to require competency testing for paid tax return preparers who are not attorneys, certified public accountants or enrolled agents. Publication 4832 also stated that, “There will not be any ‘grandfathering’ from these testing requirements based upon past tax return preparation experience.” In other words, all paid preparers would have to demonstrate competency through testing, even those who had years of tax return preparation experience. Since practitioner competence would become an express obligation under proposed §10.35 of Treasury Circular 230, a recommendation to require competency testing for all practitioners is consistent with this proposed new section.

The testing requirement was implemented as part of the Registered Tax Return Preparer (RTRP) regulations inserted into various provisions of Treasury Circular 230 in the years subsequent to the issuance of Publication 4832. As a result of the regulatory regime, by passing the Special Enrollment Examination, EAs not only have the right to represent taxpayers in controversies before the IRS but also have the right to prepare income tax returns as compensated preparers. Thus, former IRS employees may not only waive the requirement to pass the Special Enrollment Examination as a result of §10.4(d), but their status as EAs exempts them from the requirement to pass the RTRP.

We continue to believe now, as we believed and recommended in our 2010 report that all individuals should be required to take and pass the Special Enrollment Examination as a requirement to enrollment as an EA.

Former IRS employees are the only group of individuals who can become Circular 230 practitioners without demonstrating competency through a test—attorneys are subject to the bar exam; certified public accountants to the Uniform Certified Public Accountant Examination; EAs and ERPAs (other than former IRS personnel) to the

Special Enrollment Examination; and registered tax return preparers to the RTRP exam (assuming the RTRP examination requirement is upheld in court).

The testing exemption is clearly contrary to the statement in Publication 4832 that "past experience" would not be recognized for any "grandfathering" purpose. It is difficult to articulate how five years of experience as an IRS employee "regularly. . . . applying and interpreting" federal tax law is qualitatively superior to (1) five years of similar experience in the private sector, or (2) five or more years actually preparing federal income tax returns of the type that are the subject of the RTRP examination. Moreover, since the provisions of Treasury Circular 230 are drafted and approved by Treasury, continuing to provide a testing exemption only for former IRS employees seems both self-serving and inconsistent with the IRS's stated objective of requiring all Treasury Circular 230 practitioners to demonstrate competence through testing.

Recommendations

Treasury should revise Circular 230, §10.4 to remove the authority to grant enrollment to former IRS employees simply based on past IRS work experience. Treasury Circular 230 should require all persons, including former IRS employees, to take and pass the Special Enrollment Examination as a requirement to enrollment as an EA.

ISSUE THREE: CONTINGENT FEES

Executive Summary

Section 10.27 of Treasury Circular 230 permits a practitioner to charge a contingent fee in connection with the IRS examination or challenge to an amended return or claim for refund where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving written notice of the examination of, or written challenge to the original tax return. This rule generally prohibiting contingent fees went into effect on March 26, 2008. In our view, the current limitation on contingent fees is overly restrictive. In many instances, the only opportunity for small businesses taxpayers and individuals to assert a valid claim against the IRS is if their representative is compensated via a contingent fee.

The purpose behind the current general prohibition against contingent fees is to prevent taxpayers from taking advantage of the audit lottery by advocating specious claims with nominal economic risk. However, Treasury Circular 230 provides numerous safeguards against such conduct, such as the due diligence requirement of Section 10.22, the documents submission standards of Section 10.34(b), the proposed competency requirement of Section 10.35 and the prohibition against assisting a client to violate any federal tax laws of Section 10.51(a)(7). These sections of Treasury Circular 230 provide the Office of Professional Responsibility with sufficient tools to sanction representatives for frivolous or unreasonable claims. Moreover, the 120-day standard described in the regulations is arbitrary and difficult to defend. We believe that contingent fees should be permitted in instances other than the filing of an original tax return where (1) the taxpayer's position is transparent and (2) the taxpayer discloses that the paid preparer of the claim or amended return is compensated through a contingent fee.

Discussion

Treasury Circular 230 permits the use of contingent fees only in very narrow circumstances. Prior to 2008, Treasury Circular 230, Section 10.27 permitted contingent fees to be charged for the preparation of an amended return, but only if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended tax return or refund claim will receive substantive review by the Internal Revenue Service.

However, in 2007 Section 10.27 was substantially revised, eliminating the submission of amended returns from the permitted contingent fee arrangement effective March 26, 2008.

Current criteria governing contingent fees went into effect on March 26, 2008. Section 10.27, in part, currently provides as follows:

> *A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to:*
>
> *An original tax return; or*
>
> *An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.*

The concern with compensating the taxpayer's advisor via a contingent fee is that the advisor may attempt to assert an unreasonable claim to take advantage of the audit lottery. The general bar against contingent fees also represents an acknowledgment that such fees were a factor in the marketing of tax products commonly referred to as "abusive tax shelters."[1] We agree that under such circumstances, the use of a contingent fee is harmful to our system of voluntary tax compliance and is not appropriate. However, there are instances when a contingent fee may be the only means by which a taxpayer is able to submit a valid claim to the IRS.

Attorneys historically have charged contingent fees to enable litigants to assert a claim. Rule 1.5 of the American Bar Association's Module Rules of Professional Conduct establishes certain conditions that permit a lawyer to charge a fee that is "contingent on the outcome of the matter for which the service is rendered."[2] Certified public accountants may also charge a contingent fee in certain circumstances.

Many taxpayer claims require the assistance of a professional to draft and submit a claim to the IRS. Many individual and small business taxpayers lack the resources to pay an upfront fee to the professional to prepare and submit the claim. Such taxpayers are entitled to submit their claim just as taxpayers who possess the resources to engage a professional and pay an upfront fee may submit a claim. Accordingly, the use of a contingent fee is not in and of itself problematic; the use of a contingent fee to promote a specious claim by exploiting the audit lottery is the problem.

Treasury Circular 230 includes numerous provisions that prevent advisors from submitting specious claims to the IRS. Section 10.22 of Treasury Circular 230 imposes a due diligence requirement. The document submission standards of Section 10.34(b), the proposed competency requirement of Section 10.35 and the prohibition against assisting a client in violating any federal tax laws in Section 10.51(a)(7) provide the Office of

[1] Comments on Treasury Circular 230 Section 10.27 by the American Bar Association Section of Taxation, July 15, 2010
[2] Module Rules of Prof'l Conduct R.1.5(2009)

Professional Responsibility with ample enforcement mechanisms to sanction representatives for frivolous claims. Recently proposed revision to the written tax advice provisions in Section 10.37 of Treasury Circular 230 require that a practitioner, when evaluating a federal tax matter, not take into account the possibility a tax return will not be audited. Moreover, the penalty regime of the Internal Revenue Code of 1986, as amended, (the "Code") in particular Section 6694 which was recently strengthened, and Code Sections 6700 and 6701 all provide the IRS with ample authority to sanction representatives for egregious conduct.

In our view, the rule permitting contingent fees in connection with an examination of an amended return or claim, if the submission is made within 120 days of the commencement of the examination, is not an effective tool. The 120 day period is somewhat arbitrary. Moreover, if a practitioner were to submit a claim for refund or an amended return during an examination solely to deter and hinder the examination, that conduct would be a violation of Section 10.34(b)(2)(i) regardless of whether a contingent fee is charged.

We believe that a contingent fee should be permissible in instances other than the filing of an original tax return when (1) the use of the contingent fee is disclosed to the IRS and (2) the taxpayer’s position is transparent to the IRS. Such transparency is found in requests for private letter rulings, request for relief pursuant to Regulation Section 301.9100, application for tax exempt status, and claims for refund.

Recommendation

Section 10.27 should be revised to permit contingent fees in instances other than the filing of an original tax return where (1) the taxpayer's position is transparent and (2) the use of a contingent fee is disclosed. Such instances include amended returns and claims for refunds, private letter ruling requests, applications for tax exempt status and similar items.

APPENDIX A:

PROPOSED CONCEPTUAL FRAMEWORK FOR GUIDANCE REGARDING TREASURY CIRCULAR 230

Who is Subject to Treasury Circular 230

The provisions of Circular 230 apply to:

- Attorneys
- Certified Public Accountants
- Enrolled Agents
- Enrolled Actuaries
- Enrolled Retirement Plan Agents
- Registered Tax Return Preparers
- Actuaries

In addition, any individual in possession of a PTIN, or who for compensation prepares or assists in preparing all or a substantial portion of any document for submission to the IRS that pertains to a taxpayer's tax liability is subject to the Treasury Circular 230 duties and restrictions relating to practice and is subject to sanctions for violating Treasury Circular 230. The IRS may also impose a monetary penalty on the employer of any individual subject to Treasury Circular 230 for violations of its requirements if (i) the violations occurred in connection with the individual's activities on behalf of the employer and (ii) the employer knew or should have known of the individual's conduct. *Treasury Circular 230 §10.3, §10.8. 31 U.S.C. 330(b).*

Selected Obligations Under Treasury Circular 230

The following is a summary description of certain obligations under Treasury Circular 230. This summary does not address all provisions of Treasury Circular 230, and you should read the Circular for a more complete understanding of its requirements.

Due Diligence. You must exercise due diligence in preparing and filing tax returns and other documents, and in determining the correctness of representations made by you or your client to the IRS. You can rely on work product of another person if you use reasonable care in engaging, supervising, training, and evaluating that person, taking into account the nature of the relationship between you and that person. You generally may rely in good faith and without verification on information furnished by your client, but you cannot ignore other information that has been furnished to you or which is actually known by you. You must make reasonable inquiries if any information furnished to you appears to be incorrect, incomplete or inconsistent with other facts or assumptions. *Treasury Circular 230 §10.22, §10.34(d).*

Competence. You must have the necessary knowledge, skill, thoroughness, and preparation necessary for the matter for which you have been engaged. You may be able to provide competent representation by consulting with another tax professional who has established competence in the field in question, but in doing so you must consider the requirements of Internal Revenue Code §7216. *Treasury Circular 230 Prop. §10.35*.

Conflicts of Interest. A conflict of interest exists if representing one of your clients will be directly adverse to another client. A conflict of interest also exists if there is a significant risk that representing a client will be materially limited by your responsibilities to another client, a former client or a third person, or by your personal interests. When a conflict of interest exists, you cannot represent a client in an IRS matter unless (i) you reasonably believe that you can provide competent and diligent representation to all affected clients, (ii) your representation is not prohibited by law, and (iii) all affected clients give informed, written consent to your representation. You must retain these consents for 36 months and make them available to the IRS upon request. *Treasury Circular 230 §10.29*.

Tax Return Positions. You cannot sign a tax return or refund claim or advise a client to take a position on a tax return or refund claim that you know or should know contains a position (i) for which there is no reasonable basis, (ii) which is an unreasonable position under Internal Revenue Code §6694(a)(2), or (iii) which is a willful attempt to understate tax liability or a reckless or intentional disregard of rules or regulations. You must inform a client of any penalties that are reasonably likely to apply to the client with respect to a tax return position if you advised the client regarding the position or you prepared or signed the tax return. *Treasury Circular 230 §10.34*.

Written Tax Advice. In providing written advice concerning any Federal tax matter, you must (i) base your advice on reasonable assumptions, (ii) reasonably consider all relevant facts that you know or should know, and (iii) use reasonable efforts to identify and ascertain the relevant facts. You cannot rely upon representations, statements, findings, or agreements that are unreasonable or that you know to be incorrect or incomplete. You must not take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit in evaluating a Federal tax matter. In providing your written advice, you may rely in good faith on the advice of another practitioner only if that advice is reasonable considering all facts and circumstances. You cannot rely on the advice of a person whom you know or should know is not competent to provide the advice or who has a conflict of interest. *Treasury Circular 230 §10.37*.

Errors and Omissions. If you know that a client has not complied with the U.S. revenue laws or has made an error in or omission from any return, affidavit, or other document which the client submitted or executed under U.S. revenue laws, you must promptly inform the client of that noncompliance, error, or omission and advise the client regarding the consequences under the Code and regulations of that noncompliance, error, or omission. Depending on the particular facts and circumstances, the consequences of an error or omission could include (among other things) additional tax liability, civil penalties, interest, criminal penalties, and an extension of the statute of limitations. *Treasury Circular 230 §10.21*.

Furnishing Information to the IRS. If you receive a lawful request for records or information from the IRS, you must promptly submit the requested information unless you reasonably believe that it is privileged. If the requested information is not in your or your client's possession, you must promptly inform the requesting IRS officer or employee. You must also provide any information you may have regarding who is in possession of the requested information, but you are not required (i) to make inquiries of anyone other than your client or (ii) to verify information provided by your client regarding the person(s) in possession of the requested information. You must not interfere with any lawful IRS attempt to obtain information unless you reasonably believe that the information is privileged. You cannot advise a client to submit any document to the IRS that is frivolous or that contains or omits information in a manner demonstrating an intentional disregard of a rule or regulation unless you also advise the client to submit a document that evidences a good faith challenge to the rule or regulation. *Treasury Circular 230 §10.20, §10.34(b)*.

Handling Matters Promptly. You cannot unreasonably delay the prompt disposition of any matter before the Internal Revenue Service. You cannot advise a client to submit any document to the IRS with the purpose of delaying or impeding the administration of the Federal tax laws. *Treasury Circular 230 §10.23, §10.34(b)*.

Client Records. On request of a client, you must promptly return any client records necessary for the client to comply with his or her Federal tax obligations, even if there is a dispute over fees. You may keep copies of these records. If state law allows you to retain a client's records in the case of a fee dispute, you need only return the records that must be attached to the client's return but you must provide the client with reasonable access to review and copy any additional client records retained by you that are necessary for the client to comply with his or her Federal tax obligations. The term "client records" includes all written or electronic materials provided to you by the client or a third party. "Client records" also include any tax return or other document that you prepared and previously delivered to the client, if that return or document is necessary for the client to comply with his or her current Federal tax obligations. You are not required to provide a client with any return, refund claim, or other document that you have prepared but not yet delivered to the client if (i) you withholding the document pending the client's payment of fees related to the document and (ii) your contract with the client requires the payment of those fees prior to delivery. *Treasury Circular 230 §10.28*.

Fee Arrangements. You cannot charge an unconscionable fee for services in any matter before the IRS. You also cannot charge a contingent fee for services in any IRS matter except for services in connection with:

- An IRS examination of or challenge to an original tax return;
- An IRS examination of or challenge to an amended tax return or refund claim, but only if the amended return or claim was filed no later than 120 days after the taxpayer receives a written notice from the IRS of the examination of or written challenge to the original tax return;
- A claim for credit or refund filed relating solely to a determination of interest or penalties; or

- Any judicial proceeding arising under the Internal Revenue Code. *Treasury Circular 230 §10.27*.

Negotiating Checks. You may not endorse or negotiate any check issued to a client by the government that relates to a Federal tax liability. This prohibits any person subject to Treasury Circular 230 from directing or accepting payment from the government to the taxpayer into an account owned or controlled by that person. *Treasury Circular 230 §10.31*.

Supervisory Responsibilities. If you have or share principal authority and responsibility for overseeing your firm's tax practice, you must take reasonable steps to ensure that your firm has adequate procedures in place to promote compliance with Circular 230 by your firm's members, associates, and employees. *Treasury Circular 230 §10.36*.

Best Practices. In addition to the rules with which persons must comply, Treasury Circular 230 also includes a description of best practices in matters before the IRS. These best practices include:

- Communicating clearly with the client regarding the terms of the engagement.
- Establishing facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at conclusions supported by the law and the facts.
- Advising clients regarding the meaning of any conclusions reached by the person subject to Circular 230.
- Advising clients whether they may avoid accuracy-related penalties if the client acts in reliance on that person's advice.

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

Internal Revenue Service Advisory Council

2013 Member Biographies

Michele J. Alexander

Ms. Alexander has over 30 years' experience in taxation, and is the owner of Jackson, Jackson & Jackson, in Pittsburgh, PA. She specialize in tax preparation for individuals, businesses and organizations, including the preparation and filing of all federal, state and local tax returns as well as business, corporate, partnerships and Pennsylvania inheritance tax returns. As tax professionals, her company handles all aspects of taxation. In addition, she represents clients before the IRS at the Examination and Appeals level. Prior to owning and operating Jackson, Jackson, & Jackson, her professional work experience included teaching, grant writing, negotiating federal contracts, preparation of individual and business taxes and preparing clients for tax audits. Ms. Alexander is a member of the Allegheny County Bar Association, NATP and is a Court Appointed Special Advocate (CASA). She is also a member of the National Society of Accountants (NSA). Ms. Alexander holds a B.A. from Shaw University, Raleigh, NC. **(W&I Subgroup)**

John G. Ams

Mr. Ams, J.D., is the Executive Vice President and Chief Operating Officer for the National Society of Accountants ("NSA") in Alexandria, VA. He has over 30 years in the federal tax arena with expertise providing legislative and regulatory representation in accounting and federal tax matters to a variety of constituencies including individuals, non-profit organizations, and corporations. At NSA, a professional society whose members are professionals in the areas of accounting and taxation, he is responsible for all operations and provides information, education and guidance to his membership regarding IRS regulations and administrative concerns including the new IRS tax return preparer requirements. He has presented testimony to IRS on numerous occasions and most recently testified in support of Circular 230 proposed regulations, where he raised a number of implementation concerns. Mr. Ams holds a J.D. from Georgetown University Law Center and a

BA from Michigan State University, East Lansing, MI. **(OPR Subgroup)**

Tara S. Anthony	Ms. Anthony is a Manager/Tax Practitioner with Popular Ventures, in Detroit, MI. Her responsibilities include working with audits, offers in-compromise, installment agreements and penalty abatements and payroll taxes. She is a chartered tax professional and has completed courses in individual and small business income tax preparation. She works with seniors and low income taxpayers in a large urban metropolitan area, and assist students with their tax filing requirements and tax counseling. Ms. Anthony holds a BA in Finance from Trinity College, Metatarie, Louisiana and a BA in Management Organizational Development from Spring Arbor University, Spring Arbor, MI. **(W&I Subgroup)**
Donna K. Baker	Ms. Baker, CPA, has worked in the accounting field for over 24 years and is the owner of Donna Baker & Associates, CPA and Tax Pro Filers, in Adrian, MI. In addition, she is an Associate Professor of Accounting and Chair of Accounting Department at Siena Heights University in Adrian, MI, where she teaches Intermediate Accounting, AIS, Forensic Accounting, Auditing, Taxation, etc. Her CPA firm currently prepares 650 tax returns per year focusing on C Corps, S Corps, partnerships, agricultural, non-profits and small to mid-size business returns. Her firm also provides services in auditing, business consulting, strategic tax planning, forensic examination, financial statement preparation and payroll. Ms. Baker started Tax Pro Filers as a sabbatical project that was modeled after large tax preparation chains, such as H&R Block & Jackson Hewitt. She currently has three locations and prepares 4000 tax returns per year. She is a member of AICPA, NATP, and the Michigan Association of Certified Public Accountants and the Lenawee County VITA Coalition. Ms. Baker holds a MBA Professional Accounting/Information Systems from Michigan State University and a BA – Accounting from Siena Heights University. **(W&I Subgroup)**
David F. Golden	Mr. Golden, LLM, JD, CPA, has worked in the tax field for over 26 years and is a partner with the law firm of

Troutman Sanders LLP, in Atlanta, Georgia. His responsibilities includes, planning, compliance, transactions, and civil tax controversies. He is involved in a variety of matters relating to state and federal taxation of corporations, partnerships, individuals, tax exempt entities and industrial development bonds. He also provides a full range of trust and estate planning services. In addition, he prepared comments on behalf of the American Association of Attorney-Certified Public Accounts (AAA-CPA), on proposed regulations to the Section 6694 Tax Return Preparer Penalty Rules and have spoken extensively regarding Circular 230 and its impact on tax lawyers and certified public accountants. He is a member of the American Bar Association (ABA) and a member of AAA-CPA. Mr. Golden holds an LL.M from Emory University a JD from the University of Georgia and a BS from Ohio State University. **(OPR Subgroup)**

Linda S. Harding

Ms. Harding, CPA is the Director of Tax for CPAmerica International, a national association of independent CPA firms in Gainesville, FL. She has 30 years in the field of taxation. Her responsibilities include overseeing the members' tax needs including technical resources, tax practice management, best practices, publications, continuing education and information disbursement. She has a strong technical background in federal and state taxation, including tax minimization strategies, tax compliance, FAS 109/FIN 48 requirements and disclosures and is proficient in tax issues regarding C Corporations, S Corporations, Partnerships, LLCs, individuals and estate and gift tax planning and GAAP. In addition, she is charged with keeping members informed of the requirements of Circular 230 standards as well as other practice issues (such as IRC Section 7216). In addition, she is a member of the American Institute of Certified Public Accountants (AICPA), a member of the AICPA Legislation and Policy Committee and the Florida Institute. **(OPR Subgroup)**

Sanford D. Kelsey, III

Mr. Kelsey, JD, LLM, CPA, has worked in the tax field for over 18 years including in government, industry, and private practice and is currently a Senior Tax Attorney for FedEx Corporation, in Memphis, TN. His responsibilities include advising stakeholders of FedEx's various subsidiaries on federal, state and local, and international tax matters. He has also advised clients on administrative and legislative initiatives. In addition, his experience includes counseling clients on tax matters regarding structuring transactions and providing representation during tax contests. He has served as tax counsel on projects involving multi-discipline clients and has provided technical support for the clients' tax departments. Mr. Kelsey currently serves as an articles editor on the Editorial Board and Publication Committee of The Tax Lawyer – SALTE, an American Bar Association (ABA) Publication. He is also a member of the ABA, the Florida Bar Association and the Tennessee Society of Certified Public Accountants. Mr. Kelsey is a CPA (TN-inactive) and holds an LLM from Georgetown University Law Center, a J.D. from Indiana University School of Law and a BBA from Tennessee State University. **(SBSE Subgroup)**

Richard G. Larsen

Mr. Larsen, JD, CPA, is a Distinguished Professor of Accounting at George Mason University, School of Management in Fairfax, VA. He teaches courses on Taxation and Managerial Decision Making and on Taxes and Business Strategy. Prior to joining George Mason University he was a partner in the National Tax Department of Ernst & Young. At the time of retirement, he was a member of the Tax Accounting and Risk Advisory Services group specializing in accounting for income taxes (including FIN 48 disclosures) and tax risk management (he was the global director of this area). He is a member of AICPA, ABA, National Association of Corporate Directors and the American Accounting Association and he is presently on the Board of Directors of Tax Analysts and the Bureau of National Affairs Accounting Advisory Board. Mr. Larsen holds a JD from George Washington University, National Law Center, Washington, D.C. and a BBA from George Washington University, Washington, DC. **(LB&I Subgroup)**

Janice Lucchesi

Ms. Lucchesi, CPA, currently serves as Vice President of Tax for Akzo Nobel Inc, in Chicago, IL. Ms. Lucchesi joined Akzo Nobel in 1993 and her responsibilities include directing the tax affairs of the companies in North America and coordinating transactions with international tax impact with the foreign parent. Prior to joining Akzo Nobel Inc., Ms. Lucchesi was a Senior Manager with Ernst and Young. Ms. Lucchesi has served as a member of the Executive Committee of the Organization for International Investment, the International Fiscal Association, and the Tax Executive Institute. She is member of the Advisory Board of the George Washington Law School/IRS Annual Institute on Current Issues in International Taxation and the University of Chicago Tax Conference Planning Committee. She is a CPA, and holds a BA degree in economics and sociology from Rice University and a Master of Management degree from Northwestern University. **(LB&I Subgroup Chair)**

Mark Stephen Mesler (Sr.)	Mr. Mesler, J.D., has over 25 years' experience in taxation, and is a Principal with Ernst and Young LLP, in Atlanta, Georgia. He leads E&Y's Southeast Tax Controversy and Risk Management Service group and represent taxpayers before the IRS at all levels of tax controversies. His responsibilities include both large global companies and middle market. He has assisted them on a variety of dispute resolution tools and processes ranging from the Quality Examination Process, Fast Track Settlement, preparing for litigation, Pre-Filing Agreements, Private Letter Rulings, etc. In addition, he served on teams tasked with implementing major IRS policy initiatives, such as the disclosure of reportable transactions by taxpayers and material advisors, implementation of Schedule M-3, Schedule UTP, and changes to Circular 230. He is the author and presenter of various legal and accounting education seminars. Previously, he was a trial attorney for the IRS' Office of Chief Counsel, where he specialized in complex litigation and bankruptcy matters. Mr. Mesler holds a J.D. from Georgia State University College of Law and a B.S. from Baptist University of America. **(LB&I Subgroup)**
Charles J. Muller, III	Mr. Muller, LLM, JD, has worked in the tax field for over 30 years and is an Attorney/Shareholder with the law firm of Chamberlain Hrdlicka, in San Antonio, TX. His responsibilities include, civil, criminal, malpractice, tax, commercial and financial. He represents major health care providers in False Claims Act litigation. His tax controversy practice includes federal and state civil tax litigation; federal criminal tax litigation including related

white collar crime representation; property tax disputes and litigation; representation of attorneys and accountants in malpractice cases and discipline proceedings; representation of taxpayers before the IRS appeals offices; and representation of taxpayers during civil and criminal IRS examinations. Mr. Muller has chaired the American Bar Association Committee on Civil and Criminal Penalties and the Penalties Tax Force and he is a recipient of the Attorney General's Marshall Award for Outstanding Legal Achievement in the Trial of Complex Litigation. He is a member of both the American College of Tax Counsel and the American Bar Association (ABA), Tax Section, in addition to being listed in the Best Lawyers in America. He is a lecturer and presenter on various topics to professional organizations. Mr. Muller holds an LLM (Taxation) from Georgetown University School of Law and a JD and BA from St. Mary's University. **(OPR Subgroup Chair)**

Fred F. Murray

Mr. Murray, JD, CPA, is a Managing Director, Grant Thornton, LLP, U.S. member of Grant Thornton International, in Washington, DC. His responsibilities include managing policy, procedures, and risk in relation to United States Tax Services practice for a major international accounting firm with more than 500 offices in 113 countries – including evaluation of tax return positions and penalty concerns; risk analysis; reportable transactions and material advisor concerns; disputes and controversies with tax authorities, Sarbanes-Oxley, SEC, GAO and PCAOB matters; and SFAS 109/FIN 48 (ASC 740) financial accounting matters. He is a recipient of the 2010 Grant Thornton Tax Outstanding Performance Award. His experience includes public law and accounting practice and previous government service as Special Counsel to the Chief Counsel for the Internal Revenue Service and as Deputy Assistant Attorney General in the Tax Division at the Department of Justice. He is an Adjunct Professor of Law at Georgetown University Law Center. He is a member of the American Bar Association (ABA) Section of Taxation, (Council Director (2012-2015), and Chair (2009-2011), Committee on Administrative Practice). In addition, he is a Fellow of the American Law Institute, and a member of the American College of Tax Counsel, AICPA and the Federal Bar Association (Last Retiring Chair, Section of Taxation). Mr. Murray holds a J.D. from the

University of Texas at Austin Law School and a B.A. from Rice University. **(SBSE Subgroup)**

Paul O'Connor

Mr. O'Connor, LLM, JD, CPA, is the Vice President, Head of U.S. Tax for EMD Millipore Corporation, in Billerica, MA. He has 32 years in taxation in the technology, software, and bioscience fields. For more than two decades, he has been chief tax officer for Millipore Corporation (now EMD Millipore, a wholly-owned subsidiary of Merck KGaA, Darmstadt, Germany), a company engaged in bioscience research, chemical and pharmaceutical production. He manages a department of 11 members; overseeing all tax matters for Merck's North American subsidiaries, which include corporate tax, risk management, transfer pricing, and dispute resolution. He is a member of Tax Executive Institute (TEI) and served as the International President from 2010-2011. Mr. O'Connor holds a LL.M in Taxation from Boston University Law School, a J.D from Suffolk University Law School and a B.S from Boston College, School of Management. **(LB&I Subgroup)**

Luis R. Parra, EA

Mr. Parra, EA, is the owner of Key Accounting of New York, in Bronx, NY. He has over 25 years of professional experience in accounting, auditing and taxation. He prepares tax returns for individual tax clients, small business and non-profit organizations. He previously served as a VITA instructor and he is the founder and President of the Latino Association of Tax Preparers, Inc (LATAX). The LATAX is a non-profit organization providing education and support to Latino Tax Preparers in the United States. It has over 200 members in ten states that provide tax preparation services. In addition, he is the founder of the first tax school in the Bronx, NY (English and Spanish classes) and over 1,200 have participated in classes. Mr. Parra is a member of NATP and NAEA. He holds a BA degree in accounting from Inter-American University in San Juan, PR. **(W&I Subgroup)**

David M. Penney

Mr. Penney, CPA,CA (Canada) was the General Director, Taxes and Customs and Assistant Secretary, General Motors of Canada Limited, Oshawa Ontario, Canada. He recently retired. He has 36 years of tax experience in government and industry. He served as the Head of Tax for

General Motors of Canada, leading a team responsible for income, property and commodity tax matters. His experience includes a wide range of cross border issues and in particular transfer pricing controversies involving Canada and the United States. Mr. Penney served as TEI's International President for the 2011-2012 term. A member for more than two decades, he previously held several important positions in TEI's senior leadership cadre, including Senior Vice President and as a member of TEI's Executive Committee. In addition, he has served on the Large Business Advisory Committee, of the Canada Revenue Agency. Mr. Penney holds a Bachelor of Commerce degree from Carleton University School of Business and a Chartered Accountant designation from the Institute of Chartered Accountants of Ontario, Canada. **(LB&I Subgroup)**

William E. Philbrick

Mr. Philbrick, CPA/ABV, CVA, CFF, CGMA is a Senior Vice President with Greenberg, Rosenblatt, Kull, & Bitsoli, P.C., in Worcester, MA. He has over 30 years' experience in taxation and his responsibilities include individual and corporate taxation and tax planning at both the Federal and state levels including international taxation. He also has extensive experience in mergers and acquisitions, and has represented clients as an expert witness for valuations in dispute litigation proceedings. He has represented clients in estate and valuation matters before the IRS and the Commonwealth of Massachusetts. In addition, he prepares valuations for closely held businesses, publicly traded companies, personal holding companies and LLCs. These entities operations include personal service providers such as insurance agencies and investment holdings, real estate management, manufacturers, construction and technology services. He has also represented clients before the IRS and various states with respect to insolvency matters concerning cancellation of debt income, collection matters and divisive reorganizations. Mr. Philbrick is a frequent lecturer and speaker before professional organizations on several tax areas. Mr. Philbrick is a member of the AICPA, the Massachusetts Society of Certified Public Accountants, the Massachusetts Association of Accountants, the National Association of Certified Valuators and Analysts, and the National Society of Accountants. Mr. Philbrick holds a BS in BA degree from Salem State University, Salem, MA, and a MST from Bentley University, Waltham, MA. **(W&I Subgroup)**

Andre' L. Re

Mr. Re has worked in the field of taxation for over 41 years and is the owner of Andre' L. Re, in McDonough, GA. He is a tax consultant and has represented large and medium size corporations before the IRS regarding complex issues at the group and Appeals level. His responsibilities include research and development, travel and entertainment, insurance, tax exempt status, large partnership, and many other issues. Prior to owning his own business he worked for Ernst & Young where his responsibilities included IRS income tax examinations, Service Center processes, employee plans and exempt organizations, tax controversy, and collection matters. He has had numerous opportunities to work with IRS Service Center Campuses to resolve issues with account records, sub S elections, collection procedures, entity elections, and AUR notices. In addition, he worked as a VITA volunteer and has assisted taxpayers with offers in-compromise, installment agreements and other individual and small business tax issues. Mr. Re holds a BS in accounting from Ferris State University, Big Rapids, MI, and an MA in Public Administration from Syracuse University. **(W&I Subgroup Chair)**

Janeen Ryan

Ms. Ryan, EA has 29 years' experience in the field of taxation and is the owner of Janeen Ryan, EA, in Silverthorne, CO. As a self-employed tax accountant she does tax preparation and tax planning for individuals and small businesses. Her expertise is predominantly small businesses and residential rental properties. She is the Past President of the Colorado Society of Enrolled Agents (COSEA) 2009 and 2010. In addition, she is a member of the National Association of Enrolled Agents (NAEA). Ms. Ryan holds a BS in Accounting from the University of Illinois, Champaign, IL. **(OPR Subgroup)**

Karen Salemi, FLMI, CPP

Ms. Salemi, CPP, FLMI, is Learning Consultant with Zero Chaos, which provides high-quality contingent workforce solutions. Previously, she was a Global Training Leader at International Business Machines (IBM) Corporation, in Pepperell, MA, where she created and delivered payroll related courses including COBRA, 401k, Stock options, accounting, balancing and reconciling, year-end W-2c, multistate issues and local tax classes. Prior to working at IBM, Ms. Salemi, was a Solutions Consultant and Training Manager at Kronos, Inc., a management software and services company, where she helped define their work requirements and building the technical specifications document that is used to configure the HR and payroll systems. She also worked as a Practice Leader of the Employment Tax Consulting group in Ernst & Young's Dallas office, assisting small business and other clients with various process and tax compliance issues, as well as systems implementations. Ms. Salemi is a member of the American Payroll Association (APA) and currently serves as its treasurer. She also serves on APA board of contributing writers, where she publishes and reviews articles dealing with payroll tax and compliance issues, and the Government Affairs Task Force (GATF) for Paycards subcommittee. The GATF actively monitors federal and state legislation and/or regulatory action that could adversely impact the ability of employers to successfully deploy payroll cards to their employees. Ms. Salemi holds a MBA from Seton Hall University, South Orange, NJ and a BA in Accounting from William Paterson University, Wayne, NJ. **(SBSE Subgroup)**

Neil D. Traubenberg

Mr. Traubenberg, JD, recently worked as Vice President-Corporate Tax for Sun Microsystems, in Broomfield, Colorado. He has over 35 years' experience in taxation that included an international restructuring strategy that integrated subsidiaries attained through acquisition with existing Sun subsidiaries. In addition, he managed a valuation allowance in excess of $1.8 billion and was responsible for all federal, state and foreign tax matters of the corporation and multiple subsidiaries located in the United States, Europe, and Asia. He regularly attended audit committee meetings to advise on tax matters of the company and oversaw the implementation of the Sarbanes-Oxley tax process review that resulted in no material weaknesses or significant deficiencies. Mr. Traubenberg is a lecturer on various topics to professional organizations, most recently focusing on matters related to FIN 48, International Financial Reporting Standards (IFRS), and new IRS Schedule UTP. He is a member of the ABA-Tax Section, MAPI and was Tax Executive Institute (TEI), International President from 2009-2010. Mr. Traubenberg was recently awarded Honorary Membership by TEI. Mr. Traubenberg holds a JD and a BS from Case Western Reserve University. **(LB&I Subgroup)**

Sherrill L. Trovato

Ms. Trovato, EA, is the Principal/Owner of Sherrill Trovato, MBA, MST, EA, USTCP, in Fountain Valley, CA. Ms. Trovato has more than 20 years of compliance expertise in tax preparation and consultation, and specializes in tax controversy representation before the IRS and in the Tax Court. She provides other services for her predominantly small business clients including financial statement compilation. She has authored articles and developed a program that teaches tax professionals about practice before the US Tax Court. Since 2002 she's been a regular speaker at the National Association of Enrolled Agents' National Tax Practice Institute and instructs for other professional groups across the nation. Ms. Trovato is a past president of the National Association of Enrolled Agents (NAEA). Ms. Trovato holds a Master of Science Degree in Taxation, a Master of Business Administration and a BA in Accounting
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Deborah Walker

Ms. Walker, CPA, recently worked as a partner with Deloitte Tax LLP, in Washington, DC. She was a leader of the Washington National Tax Global Employer Services practice and specialized in numerous employee benefit and executive compensation issues, including qualified and nonqualified deferred compensation arrangements, employment taxes, and health and other welfare benefits plans. She also assisted clients in resolving liabilities for unpaid taxes. Prior to joining Deloitte Tax LLP, Ms. Walker was Deputy to the Benefits Tax Counsel at the Office of Tax Policy at the United States Treasury Department and was formerly a partner-in-charge of the KPMG MidAtlantic Compensation and Benefits Practice, providing consulting services to individuals and corporate clients, and partner in the KPMG Washington National Tax Practice. In addition, she is an active member of the American Institute of Certified Public Accounts and has authored and co-authored numerous articles on compensation and employee benefits issues. Ms. Walker holds a Masters of Business Administration, University of

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Cecily V. M. Welch

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Peter S. Wilson

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