



**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE
PUBLIC MEETING**

**OCTOBER 23, 2003
1111 CONSTITUTION AVENUE NW
WASHINGTON, DC**

**2003 Advisory Group
WORKING SESSION & PUBLIC MEETING
OCTOBER 22-23, 2003
1111 CONSTITUTION AVENUE – RM. 2140
INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)
AGENDA
THURSDAY, OCTOBER 23, 2003**

Time	Topic	Presenters
8:30 - 9:00	Coffee/Refreshments	
9:00 - 9:15	General Remarks	Frank Keith, Acting Chief Communications & Liaison Beanna J. Whitlock, Director, National Public Liaison
9:15 - 9:45	Opening Remarks Certificates to Departing Members	Mark W. Everson Commissioner of Internal Revenue
9:45 - 10:15	IRPAC Overview Report	Michael O'Neill, Chair, IRPAC
10:15 - 10:30	BREAK	
10:30 - 11:30	Large & Midsize Business Subgroup Report	Keith Jones, Director, Field Specialists, LMSB Curt Wilson, Associate Chief Counsel Neal Givner, Chair, LMSB Subgroup
11:30 - 12:30	Tax Exempt & Government Entities Subgroup Report	Tom Terry, Senior Advisor, TEGE Barbara Seymon-Hirsch, Chair, TEGE Subgroup
12:30 - 1:45	Lunch	To Be Provided (Members Only)
1:45 - 2:45	Small Business & Self Employed Subgroup Report	Brien Downing, Director, Office of Professional Responsibility Curt Wilson, Associate Chief Council Ronald Moonin, Chair, SBSE Subgroup
2:45 - 3:00	BREAK	
3:00 - 4:00	Wage & Investment	Carolyn Tavenner, Director, Media & Publication Connie Davis, Chair, W&I Subgroup
4:00	Adjourn	

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**PUBLIC MEETING
BRIEFING BOOK**

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**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

REPORT TO THE COMMISSIONER

**JEFFREY A. ADELSTONE
DOROTHY T. ATCHISON
KAREN CARTER
CAROLE R. CONKLIN
CONNIE L. DAVIS
PAMELA D. EVERHART
NEAL S. GIVNER
CAROL A. KASSEM
LINDA M. LAMPKIN
ERNEST V. MOLINARI
RONALD C. MOONIN
MICHAEL T. O'NEILL
BARBARA SEYMON-HIRSCH**

OCTOBER 23, 2003

**GENERAL REPORT
OF THE
INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

The Information Reporting Program Advisory Committee (“IRPAC” or “Committee”) was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989.¹ At that time, Congress recommended that the Internal Revenue Service (“IRS” or “Service”) consider “the creation of an advisory group of representatives from the payor community and practitioners interested in the information reporting program . . . to discuss improvements to the system.”² Congress believed that such an advisory group would be helpful for purposes of discussing “problems and the feasibility of complying with, or the economic impact of, rules and regulations affecting the reporting industry.”³ Since its inception, the IRPAC has worked closely with the IRS to provide recommendations on a broad range of diverse issues intended to improve the Information Reporting Program and achieve fair and equitable treatment of taxpayers.

During calendar year 2003, the Committee met at IRS headquarters in Washington DC four times in preparation for its October 23, 2003 public meeting. The IRPAC also worked with the Internal Revenue Service Advisory Council (“IRSAC”) and staff of the Office of National Public Liaison (“NPL”) to conduct focus groups at four of the IRS Nationwide Tax Forums. These focus groups provided important feedback from tax practitioners regarding the effectiveness of several major IRS programs, such as the Employer Identification Number, Offer-in-Compromise, K-1 Matching, and National Research Programs. Such feedback is crucial in furthering changes within the IRS that help improve the delivery of products and services.

¹ H.R. CONF. REP. 101-386, at 662 (1989).

² *Id.*

³ *Id.*

On January 27, 2003, The IRPAC Chairman participated in the IRS Oversight Board's public meeting and presented comments prepared by the Committee on the future direction of electronic tax administration (Attached herein as Exhibit A). The IRPAC also provided follow-up comments to the Oversight Board on the proposal to extend the filing due date for individual income tax returns (Attached herein as Exhibit B).

The Committee will continue to coordinate with both the Oversight Board and the IRSAC in advancing payee, payor, and practitioner issues that promise to improve the IRS Information Reporting Program and increase voluntary compliance with the tax law.

On May 1, 2003, the IRPAC submitted its recommendations to the IRS Chief Counsel's office for the publication of several items on the 2003-04 Guidance Priority List (Attached herein as Exhibit C). These items addressed the following information reporting issues:

- Shared access to Forms W-8 and W-9 for related entities,
- Electronic transmission of Forms W-8 and W-9 by foreign intermediaries,
- Form 1099-CAP reporting,
- Withholding taxes on credit default swaps,
- Schedule K-1 enhancements,
- LLC election and tax classification, and
- Form W-4NR for nonresident aliens.

Many of these items are discussed further in the individual reports prepared by the Committee's four Subgroups: Tax-Exempt/Governmental Entities Subgroup ("TE/GE Subgroup"); Large & Mid-Sized Business Subgroup ("LMSB Subgroup"); Small Business/Self Employed Subgroup ("SB/SE Subgroup"); and Wage & Investment Subgroup ("W&I Subgroup").

As the year draws to a close, the IRPAC has completed its third year under the auspices of NPL, which has responsibility within the IRS for providing administrative support and direction for the Committee. Coordination provided by NPL is vital in arranging contacts between Committee members and appropriate levels of IRS management. The IRPAC wishes to acknowledge the excellent service it has received from NPL staff in supporting the work of the Committee.

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**LARGE & MIDSIZE BUSINESS
SUBGROUP REPORT**

During the 2003 calendar year, the LMSB Subgroup worked with the IRS Office of Chief Counsel and Treasury representatives on a number of significant information reporting issues affecting the financial services industry, including:

- **Letter - (*Givner*)** Reporting of Qualified Dividend Income and Substitute Payments

Information reporting for Qualified Dividend Income and substitute dividend payments under the Jobs and Growth Tax Relief and Reconciliation Act (JGTRRA) of 2003.

On June 19, in response to a direct request from the IRS, members of the LMSB Subgroup arranged a kick-off conference call between the IRS Office of Chief Counsel and members of industry to discuss how to implement information reporting for Qualified Dividend Income and substitute dividend payments. On July 29, the LMSB Subgroup met with IRS personnel from the Office of Chief Counsel and the Office of Financial Institutions & Products to continue the dialogue. On August 1, the LMSB Subgroup was represented in a meeting held with the Office of International Tax Counsel at Treasury to address the foreign aspects of information reporting for Qualified Dividend Income. On August 25, the LMSB Subgroup sent a letter to the IRS Office of Chief Counsel and the Office of International Tax Counsel at Treasury seeking immediate official guidance with respect to information reporting for Qualified Dividend Income and substitute dividend payments. In the course of the letter, the LMSB Subgroup lent the IRPAC's support to certain recommendations that had been made to the IRS and Treasury by the Securities Industry Association and the New York Clearing House about how best to report information for Qualified Dividends and substitute dividend payments. On September 16, the IRS ultimately issued Notice 2003-67 providing guidance with respect to information reporting for substitute dividend payments. In a meeting with the LMSB Subgroup held on September 23, members of the Office of International Tax Counsel at Treasury paid recognition to the urgency for direction regarding the foreign aspects of Qualified Dividends and indicated that formal guidance would be issued in the near future.

- **Letter** – (*Givner*) Form 1099-CAP Reporting.

On February 5, 2003, the LMSB Subgroup met with members of the IRS Office of Chief Counsel to discuss methods to encourage the flow of information among issuers, brokers and clearing organizations necessary to implement Form 1099-CAP reporting. On March 6, the Subgroup sent a letter to the IRS Office of Chief Counsel recommending methods to facilitate Form 1099-CAP reporting for the financial community without impairing the compliance goals of the reporting requirement.

- **Letter** – (*Givner*) Withholding Taxes on Credit Default Swaps

Request the IRS to issue guidance confirming that payments made to a non-U.S. counterparty pursuant to a credit default swap are not subject to U.S. withholding tax.

- **Paper** – (*Givner*) Extend Time to Make Annual Final Catch-Up Deposits of U.S. Nonresident Alien (NRA) Withholding Tax

Request the IRS to extend the January 31 date for final annual NRA catch-up deposits to March 15 for purposes of making it consistent with the March 15 deadline allowing a Withholding Agent to make internal refunds of NRA withholding tax to customers.

- **Letter** – (*Kassem*) Information Reporting and Backup Withholding for Payment Card Transactions

Request the IRS to revise proposed regulations that address reporting and withholding for payment card transactions, specifically to eliminate the payor's requirement to backup withhold in the context of such cashless transactions. On May 8, the IRPAC filed a comment letter with the IRS formally requesting that the requirement to implement backup withholding on certain transactions be eliminated from the final regulations. This letter supported the recommendations that were included in a paper previously written by the IRPAC in 1995 addressing these same concerns.

- **Letter** – (*Kassem*) Forms 1042-S Filed for Certain Canadian Residents

Request the IRS to add a new recipient code to Form 1042-S to validate usage of a U.S. address on Form 1042-S belonging to Canadian "snowbirds" relocating temporarily to the U.S. during the winter season. This issue is expected to be addressed in the context of the revisions to the section 1441 regulations.

- **Letter – (Molinari)** Presumption Rule Application to Qualified and Non-qualified Annuities

Request the IRS to expand and clarify an example in the proposed attorney reporting regulations for purposes of clarifying the reporting requirements to a payee when separate checks are cut to a plaintiff and an attorney.

- **Letter – (Molinari)** Reporting of Gross Proceeds to Attorneys: Request Expansion and Clarification as regards Treasury Regulation section 1.6045-5(f), Example 3.

Request the IRS to revise the section 1441 regulations to address an inconsistency in the withholding presumption rules as to a payee's U.S. or foreign status with respect to the treatment of payments from non-qualified annuities versus qualified annuities. This issue is expected to be addressed in the context of the revisions to the section 1441 regulations.

In response to an IRPAC paper drafted by the LMSB Subgroup in 2002, the IRS issued Notice 2003-8 in February 2003 deferring information reporting for single stock futures. During 2003, the LMSB Subgroup continued to pursue the following carryover issues with the IRS Office of Chief Counsel:

- Revisions to the section 1441 regulations.
- Sharing of tax documents among related payors based on points of internal commonality, including centralized customer account or reporting systems, or a shared employee base responsible for the documentation function.
- Electronic transmission of tax documents consistent across form type and status of withholding agent/payor.
- Extension of the "X plus three" year shelf life of Form W-8BEN/ECI/EXP.
- Issue guidance addressing information reporting for payments made in the context of cross-border securities lending transactions.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7557, Washington, DC 20224

Michael O'Neill
Chair

August 25, 2003

Connie Davis
Vice Chair

Ms. Barbara M. Angus
International Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW – Room 1000-A
Washington, DC 20220

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

Mr. Dale S. Collinson
Special Counsel to the Associate Chief Counsel
Financial Institutions & Products
Internal Revenue Service
1111 Constitution Ave., NW – Room 4300
Washington, DC 20224

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Ms. Donna J. Welch
Senior Counsel
Internal Revenue Service
Office of Chief Counsel
1111 Constitution Ave., NW – Room 5528
Washington, DC 20224

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Re: Reporting of Qualified Dividend Income and Substitute Dividend Payments

Dear Ms. Angus, Mr. Collinson, and Ms. Welch:

On behalf of the Information Reporting Program Advisory Committee (“IRPAC”), I would like to thank you for meeting with members of IRPAC’s Large & Mid Size Business (“LMSB”) Sub-Committee to discuss integral issues, a number of which we highlight below, that affect information reporting under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the “Act”) for qualified dividend income and substitute dividend payments for calendar year 2003 and future years. The members of IRPAC’s LMSB Sub-Committee, who respectively represent various constituencies within the financial services industry that in combination comprise a major segment of the information reporting community, greatly appreciated the opportunity to articulate industry viewpoints while engaging in a meaningful dialogue with the IRS and Treasury. IRPAC also appreciates your receptiveness to consider ways to implement information reporting for qualified dividend income and substitute dividend payments so as to minimize any unwarranted cost and burden to the financial community without compromising the delivery of tax relief that President Bush intended for individual taxpayers or impairing the compliance goals of the tax system.

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

* * * * *

1. IRPAC recommends that the IRS issue comprehensive guidance as soon as possible regarding information reporting for substitute dividend payments.

In the course of a meeting held on Tuesday afternoon, July 29th, with the LMSB Sub-Committee, Mr. Collinson and Ms. Welch raised the threshold question whether the industry would be hamstrung in the absence of immediate comprehensive guidance, including IRS approval or rejection of the proposed structured hierarchy intended to allocate substitute dividend payments to individual customers. Mr. Collinson and Ms. Welch inquired whether the industry would be able to program tentatively on a generic basis and build in systemic options for future functionality for purposes of information reporting for substitute dividend payments if the IRS provides staggered instructions, e.g., initially indicating which Form 1099 is the appropriate vehicle to use for reporting substitute dividend payments and advising about transition relief, while deferring official definitive guidance, pending further review, as to whether the IRS would ultimately accept or reject the proposed structured hierarchy for allocation of substitute dividend payments to individual customers.

Discussions with members of the industry have yielded an emphatic, unanimous response. The industry is in great need of immediate comprehensive guidance from the IRS.

Realistically, Form 1099 reporting is the end product of the income collection/asset servicing process. Long before reporting systems are able to print a Form 1099 following calendar year-end, the systems need to have been previously correctly programmed and adapted to capture the specific information that ultimately needs to be reported. Simply knowing which Form 1099 to use for reporting substitute dividend payments, while admittedly helpful, adds little to the process of accurately identifying substitute dividend payments in reporting systems, effectively coding and tracking such payments through the systems, capturing such payments in a discrete bucket, and lastly formatting the information precisely so that it feeds into the intended Form 1099. IRS approval or rejection of the proposed structured hierarchy devised to allocate substitute dividend payments to individual customers impacts directly on how reporting systems will need to be programmed, customized and enhanced in order to identify, code, track, capture and format such substitute dividend payments so as to achieve the proper information reporting result. Information reporting systems are not prescient and cannot be generically programmed in advance of actual specifications; instead, the systems are inherently reactive to published IRS guidelines that explain what types of information to report, and how to format and present such

information on the appropriate Form 1099. For example, the industry awaits the release of IRS Publication 1220 (Specifications for Filing Form 1098, 1099, 5498 and W-2G Magnetically or Electronically) annually to learn what programming changes, if any, need to be effected for the relevant year's information reporting.

2. IRPAC recommends that the IRS provide transition relief from penalties for failures to comply with the new information reporting requirements for substitute dividend payments to individual customers.

The Joint Explanatory Statement of the Managers of the Conference Committee (the "Conference Committee Report") explicitly supports IRPAC's recommendation that the IRS waive penalties for transitional noncompliance with the new information reporting regime for substitute dividend payments to individual customers.

The Conference Committee Report recognizes that a broker who loans shares owned by individual customers in connection with a short sale or other transaction pursuant to a margin or securities lending agreement may make substitute dividend payments to those customers that have historically and legally (emphasis added) been reported as dividend income on Form 1099-DIV. The Conference Committee Report further indicates the conferees' intent that the IRS will waive the penalties that would otherwise be imposed on the broker if the broker attempts in good faith to report substitute dividend payments but fails to comply with the new reporting requirements because the broker's information reporting systems have not yet been conformed. In practical terms, the industry interprets this to mean that a broker should not be subject to information reporting penalties for continuing to report substitute dividend payments as dividend income during an identifiable transition period, and that individual taxpayers may continue to treat income reported to them on Form 1099-DIV as dividend income during such transition period unless they know or have reason to know that the payments represent substitute dividends and not actual dividends.

On Friday, July 11, 2003, representatives of the Securities Industry Association ("SIA")¹ met with IRS and Treasury personnel to provide industry input as to how best to implement information reporting under the Act for qualified dividend income and substitute dividend payments to individual customers. Consistent with the tenor of the Conference Committee Report, the SIA requested that the IRS and Treasury give serious consideration to providing transition relief for calendar year 2003, and proposed that potential penalties be waived where a broker is operationally unable to achieve compliance with the new reporting requirements for year 2003 but has successfully implemented the new reporting regime for substitute dividend payments to individual customers for calendar year 2004. In support of its position, the SIA noted that more than half of calendar year 2003 is already past, and that the industry requires sufficient lead time to advance customer education and to revamp systems in order to accommodate the information reporting innovations occasioned by the need to distinguish

¹ Various member firms of IRPAC's LMSB Subgroup are also members of the SIA.

prospectively between substitute dividend payments to individual customers and actual dividends.

The SIA advocated that the new reporting regime for substitute dividend payments to individuals be made effective with respect to dividends for which the record date occurs on or after January 1, 2004. Regarding calendar year 2003 information reporting, the SIA recommended that a broker be allowed to continue to report substitute dividend payments in a manner consistent with the law pre-dating passage of the Act, i.e., since Form 1099-MISC reporting for substitute dividend payments to individual customers had historically not been required, that a broker be allowed to continue to report substitute dividend payments to individuals on Form 1099-DIV for calendar year 2003. The SIA recommended that the IRS apply the transitional reporting regime for substitute dividend payments to individuals uniformly across the industry so as to avoid disparate treatment of customers at different firms and to alleviate confusing customers with accounts at more than one firm.

Further, making reference to the language in the Conference Committee Report that a broker is expected to make an interim "good faith" attempt to implement the reporting requirements for substitute dividend payments to individual customers, the SIA lobbied for usage of a universal standard of "good faith" to be applied industry-wide rather than on a more discretionary case-by-case basis. Such an approach would serve to discourage adverse competition between brokers with a history of information reporting compliance for substitute dividend payments (i.e., brokers who have been reporting substitute dividends to corporate lenders in Box 8 on Form 1099-MISC) who might be held to a higher standard of "good faith" versus other brokers who might be held to a lower standard of "good faith" on the basis of their less sophisticated systems or resources, for example.

IRPAC fully endorses the series of recommendations promoted by the SIA in the July 11th meeting with the IRS and Treasury.

3. IRPAC recommends that the IRS officially confirm that the individual customer, rather than the broker, is responsible for computing his or her own holding period for purposes of determining ultimate eligibility for the reduced rate of tax on qualified dividend income.

Under the Act, an individual taxpayer will generally qualify for the reduced rate of tax on qualified dividend income only if the common stock is held for more than 60 days during the 120-day period beginning 60 days before the ex-dividend date. In the case of preferred stock, the required holding period would be more than 90 days during the 180-day period beginning 90 days before the ex-dividend date.

Placing the onus of computing an individual customer's holding period on a broker would cause the industry a host of problems. For example, if an individual customer originally held 100 shares of Intel at Lehman Brothers, then moved his or her account to Credit Suisse First Boston, Credit Suisse would have no record of the customer's historical holding period for purposes of determining if the client satisfied the required holding period to claim eligibility for the reduced

rate of tax on qualified dividend income. Similarly, if an individual customer were a day trader, moving in and out of his Intel position, it would be virtually impossible to track the holding period of a position continually in flux.

It is IRPAC's understanding that the IRS will authorize a broker to identify a payment for Form 1099-DIV reporting purposes as qualified dividend income on the basis of the payment type itself, e.g., an IBM dividend or a Telmex ADR dividend, irrespective of the individual customer's holding period. It will then be the individual customer's responsibility to track his or her own holding period in order ultimately to determine and substantiate his or her eligibility for the reduced rate of tax on qualified dividend income reported in Box 1b on Form 1099-DIV.

The 2003 Instructions to Recipients of Form 1099-DIV would seem to support this method by providing as follows:

Box 1b. Shows the portion of the amount in Box 1a that may (emphasis added) be eligible for the new 15% or 5% capital gains rates. See the Form 1040/1040A Instructions for how to determine this amount. Report the eligible amount on Line 9b, Form 1040 or 1040A.

The 2003 Instructions to Payors for Form 1099-DIV, revised as of July 2003, would appear to reach the same result (although the Instructions are silent as to when or how it would be "impractical" for a broker to determine a customer's holding period):

Box 1b. Qualified Dividends
Enter the portion of the dividends in Box 1a that qualify for the 5% and 15% capital gains rates. Include dividends for which it is impractical to determine if the section 1(h)(11)(B)(iii) holding period requirement has been met.

IRPAC respectfully requests that the IRS provide official confirmation that the responsibility for computing an individual customer's holding period rests with the affected customer, not with the broker.

4. IRPAC recommends that Treasury include a comprehensive list of "satisfactory" income tax treaties in IRS Publication 515 (Withholding of Tax on Nonresident Aliens and Foreign Entities) under which distributions paid by a foreign corporation are potentially eligible for treatment as qualified dividend income.

The Act defines "qualified dividend income" eligible for a reduced rate of tax to include dividends paid by a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States that Treasury determines is satisfactory for this purpose and which includes an exchange of information program.

IRS Publication 515 already includes tax treaty information. As an accommodation to the industry, the benefits of which will ultimately devolve to individual taxpayers who invest in foreign securities, IRPAC recommends that the IRS update Publication 515 to include a master list of income tax treaties under which dividends paid by a foreign corporation would be potentially eligible for treatment as qualified dividend income. It would simply be too labor-intensive, precarious and prone to inconsistency, for the industry to have to research the nuances of every U.S. income tax treaty to determine whether the substance of any particular treaty is sufficiently "satisfactory" for purposes of treating a foreign distribution as "qualified dividend income."

The 2003 Instructions to Payors for Form 1099-DIV, revised as of July 2003, include a "tip" advising that a "a list of income tax treaties of the United States that (a) are comprehensive, (b) include an information exchange program, and (c) have been determined by the Treasury Department to be satisfactory for this purpose is expected to be available before the end of 2003."

IRPAC thanks Treasury for its efforts to compile a list of income tax treaties under which dividends paid by a foreign issuer will be potentially eligible for treatment as qualified dividend income.

5. IRPAC recommends that Treasury consider the efficacy of certain presumptions (during a prescribed transition period, at minimum) for the purpose of identification of distributions paid on foreign equities as "qualified dividend income."

On Friday, August 1, 2003, industry members² met with Barbara Angus, International Tax Counsel at Treasury, and two members of her staff, Michael Caballero and Carl Dubert, to discuss various international tax issues impinging on information reporting for qualified dividend income. The objective of the meeting was to inform Treasury of the pronounced need for guidance by the financial services industry as to how to determine whether distributions paid on foreign equities should be reported to individual taxpayers as qualified dividend income.

To facilitate making such determinations, the industry proposed that a set of presumptions be put in place which might be relied upon by the industry for purposes of preparing Forms 1099-DIV. For example, the industry recommended that distributions on common stock (or ordinary shares), or an ADR backed by common stock (or ordinary shares), of a foreign corporation that is readily tradable on an established securities market in the U.S. should be treated as qualified dividend income for reporting purposes. Similarly, distributions paid on common stock or ordinary shares issued by a foreign corporation organized in a qualifying treaty country (as determined by Treasury, *supra*) should be treated as qualified dividend income. In contrast, distributions paid on equity securities other than common stock or ordinary shares (e.g., preferred stock or hybrid securities that are treated as equity for U.S. tax purposes) issued by a foreign corporation would

² Neal Givner, Chair, LMSB Subgroup, attended the meeting on August 1st.

be presumed not to be qualified dividend income unless the broker has specific information to the contrary.

The proposed presumptions are in no way intended to elevate the industry's reporting convenience at the expense of individual taxpayers, who themselves need accurate and precise information in order to file correct tax returns. Rather, the presumptions are viewed as filling a possible void of information from foreign issuers, allowing the reporting process to move forward to some workable degree rather than faltering completely in the absence of essential information.

In place of presumptions, Ms. Angus offered the alternative of a certification system whereby a foreign issuer would be required to certify on a variation of Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) that the issuer is in fact paying qualified dividend income because the issuer, for example, is a resident of a qualifying treaty country, meets the applicable Limitation on Benefits provision, and is not a passive foreign investment company (PFIC). Although the idea of a certification system is certainly worth exploring, the industry is greatly concerned that such a system would not be easily administrable given the mass of U.S. brokers who would all be vying to obtain Forms W-8BEN from the same target group of foreign issuers who might not prove accessible and who would have the additional advantage of operating within a system with scant enforcement mechanisms against their failure(s) to provide a Form W-8BEN. In the absence of an identifiable collection point somewhere among foreign issuers, their paying agents, stock exchanges, clearing organizations, U.S. brokers and their customers, which could serve as the focal point for information within a centralized certification system, the industry advocates the use of a central repository for such certifications, e.g., an IRS website or publication where such information could be posted for general accessibility. The industry would then know where to retrieve such information for inputting into its reporting systems.

At best, a foreign issuer certification system presents a possible long-term solution. As a precedent, the industry can attest to the multiple fits and starts, both on the part of the Government and on the part of industry, that attended implementation of the Qualified Intermediary regime. In the meantime, the industry needs immediate workable guidelines to enable it to accomplish information reporting for distributions from foreign issuers. While perhaps not a permanent solution, the use of interim presumptions would allow the industry to avoid logistical paralysis in the absence of needed information regarding the status of foreign distributions.

6. IRPAC recommends that the IRS extend the January 31 deadline for mailing Forms 1099-DIV to customers for at least thirty days.

In a letter dated July 2003, addressed to Mr. Michael S. Novey, Associate Tax Legislative Counsel, and Ms. Viva Hammer, Attorney-Advisor, Department of the Treasury, the New York

Clearing House Association³ (the "Clearing House") "strongly recommended" that the January 31 deadline for mailing Forms 1099-DIV to customers be extended for at least thirty days as a result of anticipated difficulties in implementing the new information reporting regime for qualified dividend income and substitute dividend payments. In March 2002, the IRS had extended the deadline for filing Forms 1042-S for calendar year 2001 without the necessity of legislative action in order to facilitate the first year of mandatory filing of information returns by Qualified Intermediaries.

IRPAC fully endorses the Clearing House's "strong" recommendation that the deadline for mailing Forms 1099-DIV to customers be extended for at least thirty days so that the industry may be allowed sufficient time to provide complete and accurate tax information to customers.

* * * * *

If you have any questions or need additional information concerning these comments, please call Neal Givner, Esq., Chair, LMSB Subgroup, at (212) 538-4235.

Sincerely,



Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liasion
Michael Caballero, Associate International Tax Counsel
Carl Dubert, Deputy International Tax Counsel (Acting)
Viva Hammer, Attorney-Advisor, Department of the Treasury
Michael E. Hara, General Attorney
John McGreevey, Senior Advisor
Michael S. Novey, Associate Tax Legislative Counsel
Curtis G. Wilson, Assistant Chief Counsel – Administrative Provisions & Judicial Practice

³ Various member firms of IRPAC's LMSB Subgroup are also members of the Clearing House.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7557, Washington, DC 20224

Michael O'Neill
Chair

March 6, 2003

Connie Davis
Vice Chair

Nancy L. Rose
Attorney-Advisor
Office of Associate Chief Counsel
Procedure and Administration
Administrative Provisions and Judicial Practice
CC:ITA:RU (REG-143321-02)
Room 5226
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Re: Form 1099-CAP Reporting

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

Dear Ms. Rose:

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I wish to thank you for affording us the opportunity to provide the Internal Revenue Service ("IRS") with comments on the temporary and proposed regulations under Section 6045 of the Internal Revenue Code (the "Code"), which address information reporting requirements for brokers in the context of corporate transactions described in Section 6043(c) of the Code, including transactions where control of a corporation is acquired or where a corporation undergoes a recapitalization or other substantial change in its capital structure.

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

These comments serve as a follow-up to a productive dialogue held on Wednesday afternoon, February 5, 2003. In attendance at the meeting on February 5th were yourself, Ms. Marlene Oppenheim, your colleague in the Office of Chief Counsel, and the members of IRPAC's Large & Midsize Business ("LMSB") subgroup, who respectively represent various constituencies within the financial services industry that together

comprise a major segment of the information reporting community. IRPAC applauds the IRS' receptiveness to consider ways to implement the Form 1099-CAP reporting requirement so as to minimize any unwarranted cost and burden to the financial community without compromising or impairing the compliance goals of the relevant reporting requirement.

* * * * *

1. IRPAC recommends that the IRS consider published and on-line repositories of Form 1099-CAP information.

As a prefatory comment, IRPAC would like to note that successful implementation of Form 1099-CAP reporting by brokers will depend exclusively upon the effective dissemination of information necessary to the reporting community to effectuate the reporting requirement. Any gaps left unchecked in the process of transmission of information from the affected corporation to the ultimate broker will render Form 1099-CAP reporting impossible to achieve. It is with this basic thought in mind that IRPAC offers the following recommendations.

The temporary regulations (TD 9022/RIN 1545-BB40), which were effective on November 18, 2002, and the text of which serves as the text of proposed regulations, require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders, a Form 1099-CAP reporting the amount of any cash plus the fair market value of any property (including stock) provided to the shareholder in the transaction. In addition, section 1.6045-3T requires a broker who, as the record holder of stock, receives a Form 1099-CAP from a corporation pursuant to the reporting requirements of Section 1.6043-4T, to file a Form 1099-CAP with respect to the actual owner and furnish such Form 1099-CAP to the actual owner. Needless to say, given the way most shares of stock are held in the U.S. today, the practical implementation of Form 1099-CAP reporting as envisioned by the temporary and proposed regulations is easier said than done.

From a factual standpoint, approximately 80 percent of all U.S. publicly issued securities are held in the street name of brokerage firms through the Depository Trust Company ("DTC"). To quote from the preamble to the temporary regulations, "a domestic corporation involved in the specified transaction" will issue a Form 1099-CAP to its shareholder. In almost all cases, said shareholder will be DTC acting in a nominee capacity through Cede & Co. Since DTC takes the position that it is **not** a "broker" for purposes of information reporting under Section 6045 of the Code, including Form 1099-CAP reporting, the dissemination of the information necessary for the ultimate broker to effectuate Form 1099-CAP reporting hits a fatal impediment. Because DTC's position is that it is not subject to Form 1099 reporting, an alternative vehicle or procedure must be identified that will bypass DTC and abet the transmission of Form 1099-CAP information from the affected corporation to the ultimate broker that bridges any potential gaps in the chain.

IRPAC recommends that the IRS consider issuing a publication that acts as a central repository of information necessary for brokers to effectuate the Form 1099-CAP reporting requirement. Consistent with the essential pieces of information required for Form 1099-CAP reporting, the proposed publication

would need to include the name, address, telephone number and taxpayer identification number ("TIN") of the affected corporation; the total number and class(es) of shares in the affected corporation that were subject to the exchange; and the total amount of cash and the aggregate fair market value of any stock or other property that were provided to shareholders in the exchange. To ensure that the information is processed successfully, the total amount of cash and the aggregate fair market value of any stock or other property must be cleanly divisible by the total number of shares that were subject to the exchange; thus, the division of amounts of cash or the fair market value of accompanying "boot" by number of shares would result in a per share amount susceptible to Form 1099-CAP reporting. Brokers would be able to apply such information against their stock record of holders of the affected shares to generate individual Forms 1099-CAP at the shareholder level. If the information is not provided in amount per share format, or is provided in a format that cannot be broken down to per share amount, it will hobble Form 1099-CAP reporting.

In practical effect, IRPAC envisions that the proposed Form 1099-CAP informational publication would be similar to IRS Publication 938, Real Estate Mortgage Investment Conduits ("REMICS") Reporting Information and Other Collateralized Debt Obligations ("CDO"), and would be based on information provided to the IRS by any domestic corporation involved in any of the types of transactions described in Section 6043(c) of the Code. In IRS Publication 938, the name and telephone number of the REMIC/CMO representative is furnished as a contact person for purposes of obtaining either tax-related information or Committee on Uniform Securities Identification Procedures ("CUSIP") numbers. In a related vein, IRS Publication 1212 contains a comprehensive List of Original Issue Discount Instruments and is another example of an existing resource that the IRS can reference when creating the new publication suggested for Form 1099-CAP reporting purposes. Brokers and other middlemen use IRS Publication 1212 to identify publicly offered original issue discount ("OID") instruments to facilitate the filing of Forms 1099. Issuers of such instruments provide the IRS with the required information, which is then included in Publication 1212 by CUSIP number.

An alternative to an IRS publication containing Form 1099-CAP information, but no less effective for informational purposes, would be to require the affected corporation to post the essential pieces of information necessary for Form 1099-CAP reporting (described above) to an IRS website. (IRPAC assumes that the affected corporation would need to provide similar information for posting to the Securities and Exchange Commission's automated EDGAR system.) Such a resource would provide for immediate dissemination of the information to the reporting community. (By way of comparison, the easily accessible IRS website for information about Qualified Intermediaries, especially the "Frequently Asked Questions," has proven to be a boon for the industry.) Under the temporary and proposed regulations, the affected corporation would be required to attach a new Form 8806 to its corporate return for the year in which the reportable transaction occurred; requiring the affected corporation to post the same information that would ultimately appear on its Form 8806 to an IRS website should therefore pose no undue problems.

Additionally, by requiring the affected corporation to provide the necessary pieces of information for Form 1099-CAP reporting to a centralized website or for inclusion in an official IRS publication, it is likely that commercial tax services, such as the Commerce Clearing House ("CCH") Capital Changes

Reporter, would exploit such an opportunity to make the information available and known to their subscribers. Commercial tax services enjoy widespread currency in the financial community and could potentially serve as a bridge for dissemination of the information necessary for Form 1099-CAP reporting.

It would be equally helpful if the respective U.S. stock exchanges were also instructed to convey to the IRS information about Form 1099-CAP reportable transactions emanating from any of their listed U.S. corporations, and to make such information available and known to the public.

2. IRPAC recommends that the IRS encourage DTC to issue "Important Notices" advising of corporate transactions subject to Form 1099-CAP reporting

DTC's position that it is not a "broker" for purposes of Form 1099 reporting under Section 6045, including Form 1099-CAP reporting, requires the financial community to identify alternative means to obtain information necessary for Form 1099-CAP reporting purposes. Given DTC's standing as a major clearing organization to the securities industry, IRPAC recommends that the IRS encourage DTC to continue its policy of issuing "Important Notices" advising of corporate transactions described in Section 6043(c) that are subject to Form 1099-CAP reporting as soon as DTC is informed of such transactions. Providing this information will prove of great value to the industry.

3. IRPAC recommends that the IRS require affected corporations to report transactions subject to Form 1099-CAP reporting no later than 30 days after record date

The temporary and proposed regulations require the affected corporation to provide a Form 1099-CAP to shareholders on or before January 31 of the year following the calendar year in which the shareholder received cash, stock or other property as part of the acquisition of control or the substantial change in capital structure; the broker is then required to provide a Form 1099-CAP to the underlying shareholder by the end of February. The proposed January 31 reporting deadline makes sense only in the context of an affected corporation having access to the full complement of its stock record and itself issuing Forms 1099-CAP to its ultimate shareholders, thus occasioning no delay. In actuality, that is not the case. Because the affected corporation's holders are likely holding through brokers, which are in turn holding in street name with DTC which is for all practical purposes outside the loop of Form 1099-CAP reporting, the January 31 reporting deadline is problematic.

Consistent with the tenor of our recommendations generally to abet efficient and early dissemination of Form 1099-CAP reporting information to its targeted audience, IRPAC recommends that the IRS accelerate the reporting date of information from the affected corporation. If the IRS adopts IRPAC's recommendation that the essential information be posted to an IRS website (even if only temporarily for ultimate inclusion in a Form 938-like publication), the affected corporation will necessarily have such information on hand by 30 days after record date (if not on record date itself). Logically, the information needs to be available to the affected corporation to effectuate the exchange transaction. There is no cogent reason to deny the reporting community immediate access to Form 1099-CAP information when it is quite likely that such information will need to be captured, processed, and stored

in the reporting system for ultimate reporting at year-end. It has been the industry's experience that longer lead time makes for cleaner Form 1099 reporting.

4. IRPAC recommends that the IRS allow brokers the option to use Form 1099-B as an alternative to Form 1099-CAP to report transactions subject to Form 1099-CAP reporting

In IRS Announcement 2003-7, which addressed interim information reporting relating to acquisitions of control and substantial changes in capital structure, i.e., Form 1099-CAP reporting for year 2002, the IRS stated plainly in Section 2 (Penalty Waiver) that it "recognizes that sufficient time is necessary for affected corporations and brokers to establish systems needed to capture and report the information required by the temporary regulations." Announcement 2003-7 was a stopgap measure that was greatly appreciated by the reporting community, given the short lead time between announcement of the new reporting requirement and year-end 2002, and the as-yet absence of officially issued Forms 1099-CAP.

It is axiomatic that when implementing a new information reporting requirement, "sufficient time is necessary ... for brokers to establish systems needed to capture and report the information required ..." Industry experience strongly recommends that the reporting community be given **at minimum six months from the date of issuance of a new Form 1099 information return** to be able to identify, code, track, store, and compile the reportable payments for reporting to customers within thirty to sixty days of year-end. In the case of Form 1099-CAP reporting, the industry has been hamstrung in its effort to program for the new reporting requirement by the absence of officially issued forms.

IRPAC recommends that the IRS allow brokers to substitute the existing Form 1099-B as an alternative vehicle to effectuate Form 1099-CAP reporting. Several facts argue in favor of IRPAC's recommendation. First, the financial community's systems are already universally programmed for Form 1099-B reporting. Any adjustments needed to accommodate the component parts of Form 1099-CAP reporting on a Form 1099-B will require much less of an overhaul than the wholesale introduction of an additional information return into the industry's reporting systems. IRPAC recommends that the IRS consider revising Form 1099-B as necessary to oblige Form 1099-CAP reporting, and places the members of the LMSB subgroup at the disposal of the IRS Forms group to work toward such result.

Second, the industry opposes the unwelcome prospect of bifurcated reporting. Form 1099-CAP reporting is intended to indicate the total value of cash, stock, or other property that the shareholder receives in the context of an acquisition of control or a substantial change in capital structure. Consider the transaction where a shareholder receives cash reportable on a Form 1099-B, and a distribution in kind of "boot" reportable on a Form 1099-CAP. From a practical standpoint, for Form 1099 reporting purposes, cash distributions and non-cash distributions are captured separately. As a result, how will an affected shareholder know that the two (or more) information returns, i.e., a Form 1099-B and a Form 1099-CAP, that he or she receives are related to the **same** exchange transaction for purposes of computing a potential gain on Schedule D of his or her Individual Income Tax Return (Form 1040)? "Split" Form 1099 reporting will generate information returns that will likely confuse affected shareholders.

Nancy L. Rose
March 6, 2003
Page 6

5. IRPAC recommends that the IRS permit Forms 1099-CAP to be included on a consolidated substitute Form 1099 customer statement

If the IRS allows brokers the option to report on a Form 1099-CAP or a Form 1099-B, the IRS should permit Form 1099-CAP information to be included on a consolidated substitute Form 1099 customer statement. IRS Publication 1179 should be revised so that official authorization to include Form 1099-CAP information on a consolidated substitute Form 1099 customer statement is made explicit.

* * * * *

If you have any questions or need additional information regarding IRPAC's comments about Form 1099-CAP reporting, please contact Neal Givner, Esq., Chair, LMSB Subgroup, at (212) 538-4235.

Sincerely,



Michael O'Neill
Chair, IRPAC

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571 Washington, DC 20224

Michael O'Neill
Chair

April 30, 2003

Connie Davis
Vice Chair

Lon Smith
Associate Chief Counsel
Financial Institutions & Products
CC:FIP - Room 4300
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Large & Mid-Size
Business**

Sub-Committee:
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

**Tax Exempt/
Government Entity**

Sub-Committee:
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Betti Ricca
Deputy Associate Chief Counsel – International
CC:INTL – Room 4617
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Small Business/
Self-Employed**
Sub-Committee:
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

Re: Withholding Taxes on Credit Default Swaps

Wage & Investment
Sub-Committee:
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Dear Mr. Smith and Ms. Ricca:

On behalf of the Information Reporting Program Advisory Committee (“IRPAC”), I am writing to request that the Internal Revenue Service (“IRS”) issue guidance on the withholding status of payments made to a non-U.S. counterparty pursuant to a credit default swap.

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

* * * * *

On October 24, 2002, the North American Tax Committee of the International Swaps and Derivatives Association (“ISDA”) submitted a detailed letter to the IRS (copy attached) requesting that official guidance be issued confirming that payments made to a non-U.S. counterparty pursuant to a credit default swap are not subject to U.S.

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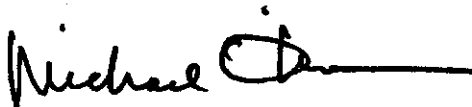
withholding tax under Section 1441¹ or 1442 or to insurance excise taxes under Sections 4371 et seq.²

IRPAC fully supports ISDA's request for guidance from the IRS confirming that payments made to a non-U.S. counterparty pursuant to a credit default swap are exempt from withholding under Section 1441 or 1442. It is IRPAC's position that such exemption is consistent with the rationale underlying Treas. Reg. section 1.1441-4(a)(3) as articulated in the preamble to the final U.S. nonresident alien withholding tax regulations, which were issued in October 1997 (TD 8734).

ISDA has requested, and IRPAC strongly endorses the issuance of, an IRS ruling to the effect that a credit default swap is a financial instrument under which payments made to a non-U.S. person are not subject to withholding under Section 1441 or 1442.

If you have any questions or need additional information concerning this request, please call Neal Givner, Esq., LMSB Subgroup Chair, at (212) 538-4235.

Sincerely,

A handwritten signature in black ink that reads "Michael O'Neill". The signature is written in a cursive style with a long horizontal flourish at the end.

Michael O'Neill
Chair, IRPAC

Attachment

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

¹ All references to Sections are to the Internal Revenue Code of 1986.

² IRPAC's comments are confined to supporting ISDA's request for confirmation of the exemption from withholding under Sections 1441 and 1442 for payments made pursuant to a credit default swap. The requested exemption from the effect of Sections 4371 et seq. lies outside the scope of this letter.

ISDA

International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
New York, NY 10017
United States of America
Telephone: (212) 901-6000
Facsimile: (212) 901-6001
email: isda@isda.org
website: www.isda.org

October 24, 2002

Courier's Desk
Internal Revenue Service
Attn: CC:ITA:RU (Notice 2002-22)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Withholding Taxes on Credit Default Swaps

Re: Withholding Taxes on Credit Default Swaps

This letter summarizes the views of the International Swaps and Derivatives Association, Inc. (*ISDA*) concerning withholding taxes (including insurance excise taxes) on payments made to a non-U.S. person pursuant to an over-the-counter contract in the form of a Credit Default Swap, that shifts credit risk among the parties on one or more reference entities or reference obligations (which may be changed over the term of the contract) (such a contract, a *CDS*, as more fully defined below). ISDA concurs in the suggestion, made in a letter, dated July 2, 2002, from Capitol Tax Partners, that the Internal Revenue Service (the *IRS*) issue guidance providing that there is no withholding tax (including any insurance or reinsurance excise taxes) on payments made to a non-U.S. counterparty on a *CDS*. (A copy of that letter is attached.)

ISDA is global trade association in the privately negotiated derivatives industry with more than 575 member institutions from over 44 countries throughout the world. ISDA's members include most of the world's leading dealers in swaps and other off-exchange derivatives transactions (collectively, *OTC derivatives*). The membership of ISDA also includes many of the businesses, financial institutions, governmental entities, and other end users that rely on *OTC derivatives* to manage the financial, commodity and other risks inherent in their core economic activities with a degree of efficiency and effectiveness that would not otherwise be possible. A list of ISDA's members is attached to this letter and additional information with respect to ISDA and its programs is available on the ISDA website at www.isda.org.

The market for credit derivatives is rapidly expanding. Positions in these instruments expanded from \$108 billion in notional principal amount as of June 30, 1998 to \$1.6 trillion as of June 30, 2002.¹ Credit derivatives play an important role in reducing risk in the bank and financial sector and are credited with having prevented severe distress in the wider financial system arising from a significant number of bankruptcies in the telecom sector and the defaults by Enron, Global Crossing, Railtrack, WorldCom, and Swissair.²

While virtually all tax practitioners believe that there are no U.S. federal withholding taxes on payments made in either direction on a CDS, the IRS has never provided any direct guidance on the point and, in light of the current size of the market and its rate of growth, such guidance would be most welcome.

As an approach to providing guidance in the area, Capitol Tax Partners suggested issuing a revenue ruling that would provide for no withholding taxes (including no excise taxes) on payments made to a non-U.S. counterparty under the following set of facts: (1) a securities dealer subject to section 475 enters into a CDS in the ordinary course of its business, (2) the CDS is documented on standard ISDA documentation that does not require a loss on the part of the credit protection buyer as a condition to collection, and (3) the Reference Entity is not related under section 267(b) or 707(b) to either the credit protection buyer or seller. Capitol Tax Partners suggested that the ruling describe the terms of a CDS, but leave flexibility as to whether there were Deliverable Obligations other than the Reference obligation, whether there were Credit Events other than a payment default, and whether settlement were in cash or through physical delivery. Capitol Tax Partners suggested that the ruling hold that a CDS is a financial instrument and that payments thereunder are not subject to withholding under either section 1441 or 1442 or the insurance or reinsurance excise tax provisions.³

We concur in the approach suggested by Capitol Tax Partners but suggest the following minor clarifications.

Clarification of the Definition of CDS:

Many CDSs in the market do not have just a single reference obligation but rather, have a "pool" of reference obligations. The composition of these pools is often not static but may be changed over time.⁴ A CDS with dynamic pooled reference obligations presents no additional withholding tax issues than a CDS with a single reference obligation and, therefore, we believe

¹ For a more detailed view of the growth in this market, see the surveys collected at www.isda.org/statistics/index.html.

² Remarks by Chairman Alan Greenspan at Lancaster House, London, U.K., September 25, 2002.

³ References to sections herein are to the Internal Revenue Code of 1986.

⁴ Although transactions vary, in a typical *synthetic* collateralized debt obligation transaction, instead of acquiring and securing the collateralized debt obligations (CDOs) with a managed pool of high yield bonds, the CDO issuer acquires (and uses as collateral) Treasury securities (or other high quality, low yield) debt instruments and enters into a managed pool of CDSs.

that any guidance should cover CDSs with single or multiple, static or dynamic reference obligations.

Clarification of the First Premise:

Although the terms “seller” and “buyer” are used in the CDS market, both dealers and end users enter into both sides of CDS transactions and, therefore, can assume the role of either the “credit protection seller” or “credit protection buyer.” Thus, the revenue ruling should set forth facts whereby a taxpayer that is a “dealer in securities” within the meaning of section 475(c) enters into either side of a CDS (that is, as either a credit protection buyer or credit protection seller).

Clarification of the Second Premise:

While market participants often document a CDS under a contract that is governed by an ISDA Master Agreement, the confirmation relating any particular CDS will be individually negotiated and will reflect the particular characteristics of the CDS or circumstances of the counterparties. Therefore, we suggest that the second condition should be phrased solely to provide that to qualify as a CDS, an agreement must be documented as an over-the-counter contract that is governed by an ISDA Master Agreement.

Dealers often enter into a CDS either as a hedge of another CDS or as a hedge of a long position in a debt instrument. Accordingly, as a practical matter, a protection buyer may have a loss on its offsetting position. The fact that a dealer or investor hedges or uses its CDS as a hedge should not affect whether payments made under such CDS are subject to withholding or insurance excise taxes. Thus, the second factual assertion on which Capitol Tax Partners asks guidance to be based should make clear that a loss is not required *under the terms of the CDS*.

Requested Guidance; Suggested Approach:

Accordingly, we respectfully request guidance that a CDS is a financial instrument and payments thereunder are not subject to withholding tax under section 1441 or 1442 or the insurance excise taxes. For this purpose, as described above, we suggest setting forth a factual scenario whereby a CDS is defined as a contract pursuant to which, for valuable consideration, one party transfers credit risk to another party with respect to one or more reference obligations (or obligations of a reference obligor), which may be changed over the life of the contract, wherein: (1) at least one party to the contract is a “dealer in securities” within the meaning of section 475(c) that enters into a CDS, (2) the agreement is documented as an over-the-counter contract that is governed by an ISDA Master Agreement that does not by its terms require a loss on the part of the credit protection buyer as a condition to payment, and (3) the reference obligor(s) or the obligor(s) on any reference obligation are not the credit protection buyer or seller and are not related to either one under section 267(b) or section 707(b).

* * * * *

ISDA respectfully requests the opportunity to discuss the withholding tax issues surrounding CDSs with representatives of the Department of Treasury and the IRS and stands ready to respond to any questions that may arise in connection with their review of these comments.

Sincerely,



Thomas Prevost
Chair, North American Tax Committee

cc: Ms. Pamela Olson
Acting Assistant Secretary (Tax Policy)
Department of the Treasury

Mr. Eric Solomon
Deputy Assistant Secretary for Regulatory Affairs
Department of the Treasury

B. John Williams
Chief Counsel
Internal Revenue Service

Ms. Barbara Angus
International Tax Counsel
Department of the Treasury

Mr. Robert Hanson
Tax Legislative Counsel
Department of the Treasury

Lon Smith
Associate Chief Counsel
Internal Revenue Service

EXECUTIVE SUMMARY

- TITLE OF PAPER:** Extend Time to March 15 of the Succeeding Calendar Year to Make Annual Final Catch-Up Deposits of U.S. Nonresident Alien ("NRA") Withholding Tax
- ISSUE STATEMENT:** Synchronize the deposit date for final catch-up payments of NRA tax with the deadline for making adjustments for over withheld NRA tax for the relevant calendar year.
- REMEDY SOUGHT:** Regulatory Change
- IRPAC TEAM:** Neal Givner, Chairman, LMSB Subgroup
- IRS PARTICIPANTS:** Curt Wilson, Office of Chief Counsel
- BACKGROUND:** At the IRPAC's Public Meeting held on Friday, November 8, 2002, Carol Kassem presented a paper entitled "Extension of Time to Refund Erroneous Backup Withholding." The paper sought a regulatory change intended to provide additional time to a payor to process refunds of erroneous backup withholding, *inter alia*, until Forms 1099 are provided to payees.
- Treas. Reg. section 31.6413(b) requires that if a payor backup withholds in error under Internal Revenue Code section 3406, the payor may refund the amount erroneously withheld if such refund is made prior to the end of the calendar year in which the withholding occurred *and* prior to the time the payor issues Form 1099 to the payee, whichever event is earlier. The IRPAC recommended that a payor be permitted to refund erroneous backup withholding if the refund is made prior to the end of the year *or* prior to the time the payor issues Form 1099 to the payee, which is customarily the later of the two dates. The additional time in which to make refunds would afford payors the opportunity to identify and remedy errors prior to issuing Forms 1099 to payees.
- SUMMARY OF RECOMMENDATIONS:** The rationale underlying last year's requested extension of time to refund erroneous backup withholding applies equally to the instant requested extension of time to make final catch-up deposits of NRA tax. The IRPAC recommends that

the deposit date for making final catch-up deposits of NRA tax be synchronized with the deadline for processing adjustments of over withheld NRA tax, i.e., March 15 of the succeeding calendar year. With additional time to make the catch-up deposit, a withholding agent would be able to use the amount of the catch-up payment as an available source of internal NRA tax refunds without having to tinker with the NRA tax bucket from the year in which over withholding occurred after calendar year-end, or “front” the money for out-of-pocket refunds to customers while awaiting its own refund claimed on Form 1042 for the year of over withholding.

**TAXPAYERS/
INDUSTRY AFFECTED:**

All foreign recipients of U.S. source fixed determinable annual and periodic (FDAP) income who have been subject to NRA over withholding during the relevant calendar year and are eligible for a refund through the March 15 adjustment deadline.

All withholding agents who pay U.S. source FDAP income to foreign recipients and are required to make quarter-monthly deposits of NRA tax withheld.

**BENEFIT TO
TAXPAYERS:
(PAYEES AND PAYORS)**

The amount of the deferred catch-up deposit will serve as an available source to withholding agents to fund internal NRA tax refunds to payees through the March 15 deadline for making adjustments for over withholding.

Withholding agents will not have to “front” the money when making NRA tax refunds to payees from January 31 through the prescribed March 15 deadline, and then wait to recover the outlay via a refund claim presented on Form 1042 for the year of over withholding.

Foreign recipients of U.S. source FDAP income who have been subject to over withholding and are eligible for a refund through the March 15 deadline for adjustments will not be required to file a refund claim with the IRS, individuals seeking a refund for over withholding of NRA tax will not need to apply on Form W-7 (Application for IRS Individual Taxpayer Identification Number (“ITIN”))

for an ITIN in order to file a Form 1040NR refund claim with the IRS.

**BENEFIT TO INTERNAL
REVENUE SERVICE:**

Allowing withholding agents an extension of time to make final catch-up deposits of NRA tax will reduce the number of refund claims presented to the IRS by foreign recipients of U.S. source income on Forms 1040NR and 1120-F, and by withholding agents on Form 1042.

DISCUSSION¹

1. WHEN TO MAKE DEPOSITS OF U.S. NONRESIDENT ALIEN (NRA) WITHHOLDING TAX

Treas. Reg. section 1.6302-2(a)(1)(ii) provides that if at the close of any quarter-monthly period within a calendar month, the aggregate amount of undeposited U.S. NRA withholding tax that is required to be withheld is \$2,000 or more, the withholding agent is required to deposit such aggregate amount of tax in a Federal Reserve bank or authorized financial institution within three banking days after the close of such quarter-monthly period.

The term "quarter-monthly period" means the first seven days of a calendar month, the eighth day through the fifteenth day of a calendar month, the sixteenth day through the twenty-two days of a calendar month, or the twenty-third day of a calendar month to the end of the relevant month.

A withholding agent will be considered to have complied with the deposit requirement for U.S. NRA withholding tax with respect to the close of a quarter-monthly period if (a) the relevant deposit is at least ninety percent of the aggregate amount of U.S. NRA tax required to be withheld during the period for which the deposit is made, and (b) if such quarter-monthly period occurs in a month other than December, the withholding agent deposits any underpayment of U.S. NRA withholding tax with his first deposit which is otherwise required to be made after the fifteenth day of the following month.

Any underpayment of \$200 or more for a quarter-monthly period closing during December must be deposited on or before the following January 31.

2. How to Make Adjustments for Over withheld U.S. NRA Withholding Tax

Treas. Reg. section 1.1461-2(a) provides that a withholding agent that has over withheld U.S. NRA tax and deposited the tax as required in Treas. Reg. section 1.6302-2(a) may adjust the over withheld amount either pursuant to the reimbursement procedure described in Treas. Reg. section 1.1461-2(a)(2) or pursuant to the set-off procedure described in Treas. Reg. section 1.1461-2(a)(3).

Under the reimbursement procedure, the withholding agent may directly repay the payee the amount of U.S. NRA tax over withheld out of its own funds. **Such repayment must be made by March 15 of the year after the calendar year in which the amount was over withheld.** The withholding agent may reimburse itself by reducing any subsequent deposits made before the end of the year after the calendar year in which the amount was over withheld.

¹ I would like to thank Paul Sewell of Brown Brothers Harriman for approaching IRPAC with this issue.

Under the set-off procedure, the withholding agent may repay the payee the amount of U.S. NRA tax over withheld by reducing the amount that the withholding agent would have been required to withhold on later payments made to that person. These later payments must be made before the earlier of the date that the withholding agent actually files Form 1042-S for the calendar year in which the amount of U.S. NRA tax was over withheld, or March 15 of the year after the calendar year in which the amount of tax was over withheld.

3. The Inconsistency in Applicable Deadlines

Under Treas. Reg. section 1.1461-2(a), a withholding agent is permitted (but not required) to process adjustments of over withheld U.S. NRA tax through March 15 of the year after the year in which over withholding occurred. However, under Treas. Reg. section 1.6302-2(a), a withholding agent is required to make its final catch-up deposit of U.S. NRA withholding tax by January 31. The disparate deadlines pose an inherent operational conflict for the withholding agent. In practical terms, the withholding agent is forced to go out-of-pocket in order to “front” an internal refund to an NRA customer after January 31 through March 15, and then wait to recover the amount repaid to the customer via a refund claim ultimately presented on the withholding agent’s Form 1042 for the year of over withholding.

The reimbursement and set-off procedures are problematic because they both involve using amounts of tax withheld in the year after the year of over withholding to adjust retroactively the amount of tax withheld in the prior year. Operationally, industry practice is to close the NRA tax bucket for any particular year at calendar year-end. Once the bucket is closed, the system generally does not allow for after-the-fact adjustments resulting from events occurring in the year after the year in which over withholding occurred; the reason for this closure is to safeguard the integrity of the original information in the NRA tax bucket as of calendar year-end for reconciliation purposes.

In addition, both the reimbursement and set-off procedures contemplate that other payments will be made to the affected customer subsequent to the time of adjusting the amount of over withholding in the succeeding year. Sometimes, no additional payments are made to the customer from which the withholding agent is able to recoup his “advance.” The end result is that the withholding agent is forced to wait for recovery of the money “fronted” to the customer via the more lengthy process of a Form 1042 refund claim.

RECOMMENDATION

A logical solution to the situation described above would be to synchronize the final deposit date for the catch-up payment of NRA withholding tax with the deadline for making adjustments for over withheld NRA tax, i.e., to make both deadlines that of March 15 of the year after the year in which over withholding occurred. This would afford the withholding agent the utmost flexibility to service NRA customers by making the catch-up payment an available source of internal NRA refunds without having to tinker with the NRA tax bucket

from a prior year, or “front” the money for refunds to customers while awaiting a refund claimed on Form 1042 for the year of over withholding.

TAXPAYERS /INDUSTRY AFFECTED

All foreign recipients of U.S. source FDAP income who have been subject to NRA over withholding during the relevant calendar year and are eligible for a refund through the March 15 adjustment deadline.

All withholding agents who pay U.S. source FDAP income to foreign recipients and are required to make quarter-monthly deposits of NRA tax withheld.

BENEFIT TO TAXPAYERS **(PAYEES AND PAYORS)**

Payees (i.e., foreign recipients of U.S. source FDAP) would benefit because payors (i.e., withholding agents) would be more amenable to making internal NRA tax refunds directly to customers through March 15 rather than referring them after January 31 to the IRS for a Form 1040NR (which requires an ITIN) or Form 1120-F refund claim.

With the ability to receive an **internal** (emphasis added) refund of NRA tax over withheld through March 15, foreign individuals would not need to apply on Form W-7 for an ITIN in order to file a Form 1040NR refund claim with the IRS.

The amount of the deferred catch-up deposit would serve as an available source to withholding agents to fund internal NRA tax refunds to payees through the March 15 deadline for making adjustments for over withholding.

In addition, withholding agents would no longer have to “front” the money when making NRA tax refunds to payees after January 31 until the March 15 deadline, and then wait to recover the out-of-pocket cost via a refund claim presented on Form 1042 for the year of over withholding.

BENEFIT TO THE INTERNAL REVENUE SERVICE

Allowing withholding agents an extension of time until March 15 to make final catch-up deposits of NRA tax would reduce the number of refund claims presented to the IRS by foreign recipients of US source FDAP on Form 1040NR or Form 1120-F, and by withholding agents on Form 1042.

In addition, if foreign individuals were able to obtain internal refunds of over withheld NRA tax directly from withholding agents through March 15, these claimants

would not need to make an application on Form W-7 to the IRS for an ITIN in order to file a refund claim on Form 1040NR.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

May 8, 2003

Connie Davis
Vice Chair

Ms. Sonya Cruse
Internal Revenue Service
CC:PA:RU (REG-116641-01)
Room 5226

**Large & Mid-Size
Business**

Sub-Committee:
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

P.O. Box 7604 Ben Franklin Station
Washington, DC 20044

Re: Information Reporting and Backup Withholding for Payment Card Transactions

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Ms. Cruse:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I am writing to provide you with our comments in response to proposed Treasury Regulation sections 31.3046(g)-1 and 301.6724-1 published on January 31, 2003 in the Federal Register. These proposed regulations address the reporting and withholding requirements for transactions associated with the use of payment cards.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Payment cards are typically issued to businesses and government agencies and used by their employees to purchase goods and/or services directly from merchants or service providers, thereby avoiding the costs of traditional paper invoice processing. The proposed regulations define the role of card organizations and establish the reporting and backup withholding requirements relative to the cardholder or payer.

In general, certain payments totaling \$600 or more made by using a payment card are subject to reporting under Internal Revenue Code Section 6041(a). The payer or cardholder is responsible for issuing the appropriate Forms 1099-MISC to service providers or payees. A primary issue in this process has been the solicitation and

compilation of pertinent information from service providers necessary for reporting purposes. The proposed regulations would permit credit card organizations, such as Visa, MasterCard, and American Express, to enter into agreements with the IRS to voluntarily solicit, store, and transmit service provider data on behalf of cardholders or payers. In addition, the agreement with the IRS would require the card organization to notify cardholders via billing statements when service providers fail to provide the required taxpayer identification number ("TIN") information upon request. Card organizations meeting these criteria and others specified in the companion proposed revenue procedure (Notice 2003-13) would become Qualified Payment Card Agents ("QPCAs").

The proposed regulations also address the issue of backup withholding relative to payment card transactions. The proposed regulations specifically state that backup withholding would not apply if the cardholder makes reportable payments through a QPCA who has validated the service provider's TIN via the IRS TIN Matching Program. Payments are also not subject to backup withholding if the payment is made during the six-month period subsequent to the date on which the QPCA first obtained the service provider's TIN. Reportable payments made through a QPCA may also be exempt from withholding if they are made within 60 days from the date of the first payment for which the QPCA is required to notify the cardholder via the billing statement that a service provider has not provided the requested TIN. If the QPCA fails to obtain the service provider's TIN within a specified period of time, cardholders who rely on a QPCA to solicit service providers for the appropriate information would be required to solicit the TIN directly from the service provider.

IRPAC recognizes and commends the efforts of the IRS to clarify issues relative to this process. However, the proposed regulations are virtually impossible to implement based on how the payment and reporting processes for these types of transactions are structured today.

Over the past several years, card organizations have worked diligently to compile extensive service provider databases containing information pertinent to information reporting. At the time a new service provider applies to its bank to enroll in a card organization's program, the bank solicits the service provider's TIN, which is then passed to the card organization to be stored in the organization's system for information reporting purposes. Card organizations typically experience a high rate of success in collecting this information since service providers understand that the relationship with their bank and card organization is crucial to the success of their businesses. Noncompliance may jeopardize a service provider's opportunity to enroll in a card organization's program to accept payment cards. Cardholders derive the benefits of this process since the service provider information required for reporting is disseminated to the cardholders by the card organizations, thus relieving the cardholders from the burden of having to build and maintain an in-house database system containing the same information.

Although many card organizations may qualify to enter into agreements with the IRS based on their willingness to compile and maintain service provider data, most organizations will not be able to comply with the requirement to notify the cardholder via a billing statement that a service provider has failed to provide their TIN. The billing statement, which shows payments made to

Sonya Cruse
May 8, 2003
Page 3

various service providers by the card organization, is the bill sent to the cardholder on a regular basis by the bank that issued the card. Service providers who have not provided their TINs are to be distinguished by asterisks or other means on the bill. This requirement can never be satisfied by most major card organizations since they do not perform the function of processing and mailing cardholder bills. Typically, the banks issuing the cards are the processors for billing statements. The proposed regulations would require card organizations to perform a task that is outside of their normal business practices. The result is that most card organizations would be prohibited from becoming QPCAs.

The proposed regulations also address how a cardholder may avoid backup withholding relative to a reportable payment made to a service provider who has provided a TIN. However, should a transaction fail to meet the required tests to not be subject to backup withholding, the cardholder is left in a quandary with no regulatory direction. What procedure is the cardholder to follow if the service provider simply refuses to provide a TIN to the card organization or the cardholder in a timely manner? Since cash never changes hands, there is no opportunity for the cardholder to withhold at the time of payment to the service provider. Moreover, if a card organization fails to meet the requirements to become a QPCA, the cardholder is faced with potential backup withholding issues for every service provider payment. Given these circumstances, cardholders would be more inclined to not use the payment cards rather than having to deal with the confusion and potential penalties that could ensue.

In 1996, IRPAC presented a briefing paper to the IRS (see attached) recommending that payment card transactions be exempt from backup withholding. Based on the reasons noted above, IRPAC continues to believe that the proposed regulations under section 31.3406(g)-1 should be revised to exclude any requirements relative to backup withholding. The Committee would welcome the opportunity to continue to work with the Service on this issue.

If you have any questions, please call Carol Kassem at (225) 332-7296.

Sincerely,



Michael O'Neill
Chair, IRPAC

Attachment

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

TOPIC: PURCHASING CARDS

**PURPOSE: TO DISCUSS THE NEED FOR GUIDANCE ON REPORTING
AND WITHHOLDING REQUIREMENTS FOR PURCHASING
CARD TRANSACTIONS**

**IRPAC
PRESENTER: CHIP COLLINS**

**SERVICE CENTER
COMPLIANCE
REVIEWER: LARRY FAULKNER**

**IRS
PARTICIPANT: JOHN COULTER**

BACKGROUND:

As a mode of making payment, credit cards create unique issues for information reporting purposes. These issues generally relate to the network of multiple parties necessary to support a credit card system. A critical difficulty is pinpointing a single party with (all three occurring simultaneously):

- (1) Privity to the business transaction, at the time of the transaction;
- (2) Access to complete name, taxpayer identification number, and address of the payee at the time of payment; and
- (3) Dominion and control over funds of the payee (if needed for backup withholding) at the time of the transaction, or other necessary time.

Functionally, a credit card user, who is engaged in a trade or business, first incurs information reporting responsibilities under sections 6041 and 6041A by signing a credit slip (or effecting a use, such as by phone call), in the course of that trade or business, for a reportable event (e.g., services rendered by an unincorporated merchant).

Indeed the Service has previously cited, to IRPAC, Rev. Ruls. 78-38 and 78-39 to support just that result. Thus, the Service's position is that use of a credit card in a trade or business setting:

- (1) Constitutes "payment" by the card user ("payor") to the accepting merchant ("payee"); and
- (2) Is made at the time the transaction occurs (by signature on a credit slip or other available means, such as phone request).

In addition to the user and merchant the other parties involved in the system are at least the issuing bank, the merchant's bank and the credit card companies (Visa, MasterCard, or American Express).

Recent consideration of this topic has focused on the fairly new development of a "purchasing card" of interest to both the private and public sectors. It is a given that credit cards have traditionally been used by individuals and companies according to their personal and business needs. Some of these uses constitute reportable events; many others do not. Although this paper focuses on Purchasing Cards alone, IRPAC notes that the common business situation of employer reimbursements to employees who use their own credit cards for business expenses pursuant to an accountable plan under section 62(a)(2)(A) are not, and should not be, subject to information reporting (Regs. §1.6041-3(i), 1.6041A-1(d)(2)).

The Purchasing Card constitutes a newer niche in the overall use of credit cards for larger companies and governments seeking to streamline and accelerate purchase activity and the processing of what would otherwise be payment activity in satisfaction of an invoice. Because the Purchasing Card is currently used exclusively in the "trade or business" setting and thus each use has the potential to be a reportable payment, it becomes important to evaluate what rules apply and how a traditional information reporting model can be efficient and effectively adapt to this new payment system.

More specifically, Purchasing Cards are issued by banks to mid- to large size corporations (above \$50 million in annual sales) for use by the corporation's authorized employees in purchasing goods and services for the corporation. The issuing bank regularly (e.g. monthly) bills the corporation for the amounts charged to the card by its authorized employees through use of a monthly statement.

For purposes of this paper, a Purchasing Card is defined as a type of credit card for which the corporate user, and not the individual employees, is liable. Purchasing Cards are distinguished from personal credit cards of the employees (referred to in this paper as "employee business expense cards"). Even if used for reimbursable business expenses such as airfare or lodging, an employee business expense card is the personal liability of the employee. A Purchasing Card, in contrast, is the liability of the corporate user.

The purpose of the Purchasing Card is to cut costs in the purchasing and accounts payable operations of these corporations. Typical transactions are under \$5000 in amount. They may be repetitive purchases or special one-time purchases.

Because no invoice is tendered nor individual check cut in a Purchasing Card transaction, processing costs are greatly reduced. Studies have shown that the average cost to process an invoice is \$85. As a result, the cost to process the purchase may be larger than the cost of the purchase itself when handled in the traditional manner. The experience of some Purchasing Card users has indicated that the type of transactions for which a Purchasing Card could be used can constitute up to ninety percent of the purchasing activity, but only ten percent of the dollars spent. The savings available by using a Purchasing Card instead of the invoice-check system can, therefore, be significant.

Given the lack of direct guidance on the subject of this paper, IRPAC has been concerned about the possible diminution of the cited savings if barriers to compliance are imposed within the current information reporting model. The recommendations set forth in this paper apply only to Purchasing Card transactions, and not other credit card uses which are distinguishable from Purchasing Card programs.

Two specific areas of possible problems include: (1) access by the payor to complete and accurate taxpayer identification number (TIN) information; and (2) need for special backup withholding rules, given the lack of dominion or control by the payor over funds due and owing to the accepting merchant.

ISSUES:

What is the appropriate framework of reporting for the class of credit cards known as Purchasing Cards, including:

- (1) Who is the payor and when does payment occur?
- (2) How should TINs be solicited?
- (3) Should backup withholding apply?
- (4) Whether there should be payee statements.

- (5) Why Purchasing Card programs are distinguishable from employee business expense card programs.

DISCUSSION:

ISSUE #1 - - Who is the payor and when does payment occur?:

IRPAC agrees with the Service that a Purchasing Card user (the corporation) is the payor and the merchant is the payee, and that these principles should apply for information reporting purposes. Consequently, any information reporting requirements under sections 6041 and 6041A would fall on the card user (as the "payor"). IRPAC does not feel that it would be appropriate to shift the reporting responsibility to some other party - - such as the merchant bank or issuing bank. A mere change in the method of payment (i.e., from check to Purchasing Card) should not result in shift of information reporting responsibilities.

Similarly, IRPAC agrees with the Service that payment occurs at the time of the purchasing card transaction.

Recommendation #1: Accordingly, IRPAC recommends that the Service issue guidance (e.g., revenue ruling, revenue procedure, notice, etc.) for this new form of payment indicating that the Purchasing Card user (the corporation) is the payor with information reporting responsibilities under sections 6041 and 6041A, and the time of payment is the time of the card use.

ISSUE #2 - - How does the card user obtain the merchant's name/TIN information:

There is no invoice received in advance with a Purchasing Card use. Thus, it becomes important to consider how the card user will obtain the merchant information needed to file Forms 1099-MISC, particularly the merchant's legal name and TIN.

IRPAC has been unable to reach a consensus on how the IRS should address the flow of information from the merchant to the card user. Regardless of how the IRS resolves this, IRPAC recommends that the Service provide guidance with respect to the current "reasonable cause" exception to information reporting penalties.

Recommendation #2A: First, a card user should be treated as satisfying the "initial" TIN solicitation requirements as a result of any TIN solicitations conducted by, e.g., the merchant banks¹. Any subsequent TIN solicitation requirements would be performed by the card user itself. If, for example, a card user is notified by the IRS that a merchant's TIN is incorrect (e.g., through a B Notice), the card user must satisfy any follow-up TIN solicitation requirements.

¹ We note the civil damage exposure for inappropriate disclosure of confidential return information detailed in section 7431 would be inapplicable to providing merchant information to the card user and to the use of this information by the card user in fulfilling its information reporting responsibilities. This is so because the merchant information is not obtained in a manner governed by section 6103 or section 3406. Sections 7431(a)(2), 7431(f), 3406(f), and 6103(a)(3). Furthermore current backup withholding regulations prevent only payors from disclosing TIN information to another person. As noted above, the merchant bank, credit card companies, and issuing banks are not payors with respect to Purchasing Cards. Temp. Reg. §35a.9999-3, Q/A 42-45.

Recommendation #2B: Second, the IRS also should provide transitional relief for the TIN solicitation rules. For the next several years, some of the merchant banks, credit card companies, and/or issuing banks may use various methods to solicit and obtain merchants' TINs while some may have no solicitation method in place on behalf of payors. Some of the solicitation techniques may not satisfy the technical TIN solicitation requirements under the reasonable cause regulations. Payors that use purchasing cards during this period, however, should not be held liable for missing or incorrect TIN penalties. Accordingly, the IRS could provide a three year transition period beginning 1996, during which Purchasing Card users would be deemed to have met all TIN solicitation requirements. Similar transition rules were adopted when the reasonable cause regulations were first adopted, and the transition rules were implemented by IRS through Publication 1586.

ISSUE #3 -- Backup Withholding

A workable set of tax rules would recognize that backup withholding is essentially impossible when making payments with Purchasing Cards. No one in the card payment system has both control over the funds and on-line complete information about the parties to the transaction. IRPAC is also concerned that any backup withholding requirements on Purchasing Cards will stifle the use of this product. When backup withholding is impossible due to the nature of the payment, the Service has provided relief in certain situations. One current exception applies to payments of commissions to special insurance agents, provided that no cash is actually paid by the payor to the special agent. See Temp. Reg. §35a.9999-3, Q/A 17; Prop. Reg. §31.3406(b)(3)-I(b)(4). Such commissions typically are retained from insurance premiums collected by the special agent. See Rev. Rul. 55-522, 1955-2 C.B. 489. Even though such commissions are reportable on Form 1099-MISC, backup withholding is not required since no cash is paid to the special agent.

Similarly, a card user has no "cash" upon which to withhold when making a payment with a Purchasing Card. No cash passes from the card user/payor to the merchant, but rather payment for the purchase is credited to the merchant's account by its bank, which then receives payment from the card-issuing bank. The card user/payor pays the card-issuing bank upon receipt of the monthly charge card statement. See also the backup withholding exceptions for real estate sales reportable under section 6045(e), as well as fiduciary and nominee accounts identified on an IRS B Notice.

Furthermore, it must be remembered that backup withholding is a "backup" procedure, one which ideally would never have to be implemented. Its purpose is to ensure that payees provide accurate names and TINs where there is no other enforcement mechanism available. In the credit card arena there is such an alternative.

Like the relationship between employer and employee, there exists a relationship between the merchant and the merchant's bank. This relationship is far larger and far more important than the issue of name/TIN information. Merchants want to be a part of the credit card system, and need to be a part for competitive reasons. Acceptance is not automatic. No merchant would endanger its acceptance by providing an invalid name/TIN. In this way, the over-riding importance of the merchant/bank relationship ensures a high degree of accuracy of name/TINs to be (ultimately) provided to IRS. Because of the importance of this relationship, and the

high degree of accuracy of the information to be provided, no backup withholding should be required.

Recommendation #3: IRPAC strongly recommends that the Service extend its backup withholding exception applicable to special insurance agents (as described above) to Purchasing Card transactions as well.

ISSUE #4 - - Payee Statements:

With the Purchasing Card, a payor may report a large dollar volume of purchase activity that come within the merchandise exception found in the regulations under section 6041. This is because a substantial percentage of the uses will be other than purely for services rendered by the payee. If the payor does not avail itself of the merchandise exception much of this dollar volume reported will be offset by cost of sales of the merchant in the merchant's determination of its gross income on its tax return. In many, many cases the amount reported will not be usable in an import way by the payee in determining its gross income for tax return purposes. The merchant will have a revenue capturing system (affected by use of the accrual method, and possibly, the need to use inventories for the clear reflection of income.)

Recommendation #4: An appropriate system will allow for alternatives to traditional payee paper statements, which will qualify as substitute statements, such as on-line information that will move through the Purchasing Card network. At a minimum, this will avoid a blizzard of unnecessary paperwork. Ultimately, a statutory modification to sections 6041(d) and 6041A(e) should be sought.

ISSUE #5 - - Employee Business Expense Cards:

The Purchasing Card programs are to be distinguished from employee business expense card programs wherein employees are issued credit cards in their individual names for use in charging authorized business expenses such as travel and entertainment. An employee business expense card is, therefore, a personal credit card of the employee.

Employee business expense card programs involve the payment by the employee (payor) at the time the charge slip is signed since the employee has personal liability for payment of the charge. Payment or reimbursement of such employee business expenses by an employer pursuant to a "reimbursement or other expense allowance arrangement" under section 62(a)(2)(A) (an accountable plan) is specifically exempt from information reporting by Regs. §1.6041-3(I) and 1.6041A-1(d)(2). The employer is neither the card user, the payor or the service recipient, thus supporting the exemption from information reporting under the Regulations.

Recommendation #5: IRS guidance on the reporting requirements for Purchasing Cards should not apply to employee business expense cards.

SUMMARY OF RECOMMENDATIONS:

IRPAC recommends that the Service issue guidance with regard to Purchasing Card programs to the following effect:

- (1) The Purchasing Card user (the corporation) is the payor; payment occurs at the time of each authorized use of the card to effect a purchase; and the Purchasing Card user (the corporation) has information reporting responsibilities under sections 6041 and 6041A.
- (2) Although IRPAC has been unable to reach a consensus on how the IRS should address the flow of information from the merchant to the card user, we recommend that: (a) a card user be treated as satisfying the "initial" TIN solicitation requirements as a result of TIN solicitations conducted by, e.g., the merchant banks; and (b) transitional relief be provided for as outlined above.
- (3) Purchasing Card users should be exempted from backup withholding in recognition of the fact that card users have no dominion or control over funds passing to the merchant.
- (4) An alternative to traditional payee paper statements should be adopted to ease the volume of paperwork having marginal utility at best. Statutory modification of sections 6041(d) and 6041A(e) should be sought if required.
- (5) IRS guidance on the reporting requirements for Purchasing Cards should not apply to employee business expense cards.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

September 29, 2003

Connie Davis
Vice Chair

Carl Cooper
Office of the Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

RE: Forms 1042-S Filed for Certain Canadian Residents

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Mr. Cooper,

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I am writing to request that the Internal Revenue Service ("IRS") give consideration to an issue pertinent to the use of a U.S. mailing address on Form 1042-S when reporting interest payments made to a bank deposit account belonging to a Canadian resident.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

A significant number of Canadian residents establish and maintain bank deposit accounts with U.S. financial institutions. At the time a bank deposit account is opened, a Canadian resident must complete Form W-8BEN to certify his foreign status as required under Reg. §1.1441-1(e)(2)(i). A valid Form W-8BEN would contain a permanent residential address in Canada. Unlike bank deposit accounts owned by other non-U.S. persons, interest paid on a bank deposit account owned by a Canadian resident is subject to information reporting per Reg. §1.6049-8. Payment information is reported on Form 1042-S as required under Reg. §1.1461-1(c)(2)(ii)(A). The permanent Canadian address shown on the Form W-8BEN would be the appropriate address to be used to complete the Form 1042-S. However, certain issues associated with bank deposit accounts for Canadian residents give rise to special considerations.

4/22

During the months from November to May of the subsequent year, a significant number of Canadian citizens come to the United States as temporary residents to escape the cold northern temperatures. Within Florida and Arizona alone there is a dramatic influx of Canadian visitors during these months, many of whom return annually to the same U.S. locales. Upon their arrival in the U.S., many Canadians who maintain deposit accounts with U.S. financial institutions request that their bank change the mailing address on file to be their temporary address in the U.S. For reporting purposes, various system codes may be used to readily identify and track deposit accounts belonging to Canadian residents. However, reporting issues arise relative to the address information on file once the account owner changes the address of record to be a U.S. mailing address and not the original Canadian address. Most deposit reporting systems are capable of housing only a single mailing address, meaning that any information reporting that occurs once the address change is made would utilize the U.S. mailing address. Most Canadians have already changed their mailing address to a U.S. address before most banks begin the process to prepare Forms 1042-S at the beginning of the year. This means that a significant number of Forms 1042-S are issued to Canadian residents using a U.S. mailing address.

According to the Instructions for filing Form 1042-S, the address of the recipient (Box 13) must be a foreign permanent address unless a specific exception applies. For reporting bank deposit interest paid to a Canadian resident, there is no exception. Under the current procedures to file Forms 1042-S with the IRS, the payer submits the records to the Martinsburg Computing Center for initial review. Records are then forwarded to Philadelphia for more detailed processing. The use of a U.S. mailing address for the recipient does not constitute a "fatal" error that would cause the Martinsburg Computing Center to reject the record during processing. However, once the information is sent to Philadelphia for additional review, the U.S. address information will force IRS personnel to contact the various banks to inquire as to the reason a U.S. address was used to file the Form 1042-S, a process that is basically manual in nature.

To alleviate this additional processing burden to the IRS, IRPAC is recommending that a new Recipient Code Type be added to the existing Form 1042-S codes to identify the recipient as a "Canadian resident." This code, when used in conjunction with the Interest Income code of 29 (Deposit interest) and the Exemption code 02 (Exempt under an Internal Revenue Code section (income other than portfolio interest)) would clearly indicate to the IRS that bank deposit interest was paid to a Canadian resident who is temporarily visiting in the U.S. No additional confirmations would be required on the part of the IRS.

IRPAC appreciates your consideration for this recommendation. Should you have questions, please call Carol Kassem at (225) 332-7296.

Sincerely,



Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

October 1, 2003

Connie Davis
Vice Chair

Carl Cooper
Office of the Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

RE: Presumption Rule Application to Qualified and Non-qualified Annuities

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Mr. Cooper:

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with comments on what appears to be an inconsistency in the withholding presumption rules as to a payee's U.S. or foreign status at Treasury Regulation ("Treas. Reg.") §1.1441-1(b)(3)(iii) with respect to the treatment of payments from annuities.

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

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

IRPAC has worked closely with the IRS to provide input concerning information reporting and withholding requirements as they pertain to the residency status of payees when the payer does not have reliable documentation. The members of IRPAC appreciate the IRS's responsiveness to industry concerns regarding the foreign withholding rules as set forth under Internal Revenue Code ("IRC") §1441.

Under the general rule governing presumption of a payee's U.S. or foreign status, a payment that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person pursuant to Treas. Reg. §1.1441-1(b)(3)(iii). However, an exception to this rule is provided at Treas. Reg. §1.1441-1(b)(3)(iii)(C) for the following: payments from trusts described in IRC §401(a); an annuity plan described in IRC §403(a); an annuity, custodial account, or retirement income account described in IRC §403(b); or an individual retirement account or annuity described in

section IRC §408, which are presumed to be made to a U.S. person if a withholding agent cannot reliably associate such payments with documentation only if the withholding agent has a record of a Social Security number ("SSN") and either a U.S. mailing address or a mailing address in a foreign country having an income tax treaty with the U.S. that provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on the amounts being paid ("appropriate mailing address"). Where the SSN or appropriate mailing address is not provided, 30% withholding must generally be applied to the payment as required by IRC §1441(a).

It is IRPAC's belief that Treas. Reg. §1.1441-1(b)(3)(iii)(C) was intended to apply to all types of pensions and annuities, including both qualified and non-qualified annuities, since payments from all of these plans are considered "designated distributions" pursuant to IRC §3405(e)(1). However, since non-qualified annuities are described in IRC §72, they fall outside the scope of Treas. Reg. §1.1441-1(b)(3)(iii)(C), and are governed by the general rule, under which payments to an individual without documentation are treated as being made to a U.S. person, even though they are "designated distributions."

IRPAC believes that IRC §72 non-qualified annuity payments should fall within the same exception to the general presumption rule currently applicable to qualified pension, retirement plan, IRA, and IRC §403 annuity payments, thereby treating payments to individuals as being made to U.S. persons only if an SSN and an appropriate mailing address is provided. To expand the exception in this way would result in greater uniformity, as non-qualified annuity payments would be treated in the same manner as other "designated distributions."

Presumably, the intent of the exception to the general presumption rule (as well as the general presumption rule itself) is to lead to a higher withholding rate in the absence of documentation, thereby forcing the payee to provide documentation to ensure that a lower withholding rate should apply. As designated distributions, the type of payments identified by Treas. Reg. §1.1441-1(b)(3)(iii)(C) are subject to the IRC §3405 withholding rules, under which payments are subject to 20% withholding if eligible for rollover, 10% withholding if non-periodic and ineligible for rollover, or wage withholding if periodic. Thus, a designated distribution to a U.S. person should always have a withholding rate of less than 30%.

In their current form, the regulations lead to an inconsistent result. For example, if a foreign payee receives a non-periodic payment from a non-qualified annuity, and the withholding agent possesses no documentation, withholding of only 10% would be imposed because the payee would be presumed to be a U.S. person under the general rule of Reg. §1.1441-1(b)(3)(iii). This is the case even though a non-periodic designated distribution from, for example, a qualified annuity to the same payee having the same lack of documentation would be subject to 30% withholding under the exception to the general presumption rule.

Carl Cooper
October 1, 2003
Page 3

IRPAC believes that a consistent rule governing the presumption of U.S. or foreign status for all designated distributions would be more in line with the intent of the existing exception for pensions and annuities, and would allow easier administration of withholding by payers of designated distributions. In addition, this change would allow the IRS to administer the rules in a more consistent manner and protect revenue by collecting a higher rate of tax when a payee does not provide proper documentation.

If you have any questions or need additional information regarding these comments, please call Ernest Molinari at (973) 802-4810.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Neill", with a long horizontal flourish extending to the right.

Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

October 1, 2003

Connie Davis
Vice Chair

Ms. Nancy L. Rose
Attorney Advisor
Office of the Chief Counsel
CC:PA:RU (REG-126024-01)

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

Room 5203
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

RE: Reporting of Gross Proceeds Payments to Attorneys: Request to Expand and Clarify Treasury Regulation §1.6045-5(f), Example 3

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

Dear Ms. Rose:

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with an additional comment on the re-proposed Treasury Regulations ("Treas. Regs.") relating to the Reporting of Gross Proceeds Payments to Attorneys published in the Federal Register on May 17, 2002. Last year, IRPAC provided comments that were presented at the IRPAC Public Meeting and included in the Public Meeting Briefing Book on November 8, 2002.

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

The members of IRPAC recommend that the IRS give consideration to expanding and clarifying Example 3 included in Treas. Reg. §1.6045-5(f), which addresses the reporting requirements when a payer issues separate checks in settlement of a legal claim, one check payable to the plaintiff and the other payable to an attorney.

Specifically, Example 3 reads as follows:

Example 3. Separate checks—taxable to claimant. C, a plaintiff in a suit for lost profits against corporation P, is represented by attorney A. P settles the suit for \$300,000. A requests P to write two checks, one payable to A in the amount of \$100,000 for A's attorney's fees and the other payable to C in the amount of \$200,000. P writes the checks in accordance with A's instructions and delivers both checks to A. P must file an information return with respect to A for \$100,000 under paragraph (a)(1) of this section.

Nancy L. Rose
October 1, 2003
Page 2

Although the example provides guidance as to the reporting responsibility of the payer with respect to the payment to the attorney, it does not address the payer's reporting obligation with respect to the payment to the plaintiff. Guidance relating to the payer's reporting requirements to the plaintiff can be found in the Middleman Regulations at Treas. Reg. §1.6041-1(f)(2), Example 2, which provides:

Example 2. [Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for \$100,000 damages and \$40,000 for attorney fees. Under applicable law, the full \$140,000 is includible in Q's gross taxable income.] R issues a check to Q for \$100,000 and a separate check to P for \$40,000. R is required to make an information return reporting a payment to Q in the amount of \$140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

IRPAC requests that the IRS expand the example at Treas. Reg. §1.6045-5(f) to provide guidance as to the proper reporting requirements with respect to the payment made to the plaintiff.

IRPAC appreciates all the time and effort the Service has spent, not only on these re-proposed Treas. Regs., but also on their predecessors. If you wish to discuss this issue further, please contact Ernest Molinari at (973) 802-4810.

Sincerely,



Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison

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**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**TAX-EXEMPT & GOVERNMENT ENTITIES
SUBGROUP REPORT**

**PAMELA EVERHART
LINDA M. LAMPKIN
BARBARA SEYMON-HIRSCH, SUBGROUP CHAIRMAN**

OCTOBER 23, 2003

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**TAX-EXEMPT/GOVERNMENTAL ENTITIES
SUBGROUP REPORT**

During 2003, the Tax Exempt & Government Entities Subgroup ("TE/GE Subgroup") worked with Internal Revenue Service ("IRS") representatives from the Tax Exempt & Government Entities ("TE/GE") Operating Division of the IRS on a number of information reporting issues, including improvements to pension reporting, increasing taxpayer awareness regarding pension tax law changes, and changes in Form 990 to clarify reporting and ease communication with filers, as well as the elimination of barriers to electronic filing of returns. The following projects were completed by the TE/GE Subgroup:

- **Paper** – (*Seymon-Hirsch*) Improve the Flow of Information Provided by the IRSto Taxpayers Regarding Retirement Arrangements
- **Paper** – (*Lampkin*) Clarify Reporting of Professional Fees on Form 990
- **Letter** – (*Everhart*) Tax Reporting Changes for Coverdell Educational Savings Account (ESA) Distributions
- **Letter** – (*Lampkin*) Add Organizational E-Mail Address to Contact Information on Form 990

In addition, the TE/GE Subgroup previously presented a paper at the November 8, 2002, public meeting in which the IRPAC recommended that the electronic filing of the Form 990 Series be established as a priority because of its far reaching impact on all taxpayers. A follow-up letter reaffirming the IRPAC's support of this recommendation was sent to the IRS on August 26, 2003.

Finally, due to time constraints, the TE/GE Subgroup found it necessary to table a number of issues for consideration this year, including a review of Forms 1099R, 5329, 5498 and 8606, and their Instructions to ensure that they accurately reflect current requirements for information reporting affecting retirement arrangements. These issues will be considered in 2004.

Thomas D. Terry, Senior Technical Advisor TE/GE; Mark O'Donnell, Director, Customer Education & Outreach, TE/GE; Roger Kuehnle, Tax Law Specialist, Guidance & Quality Review TE/GE; Cheryl Chasin, TE/GE; Midori Morgan-Gaide, TE/GE; Marjorie Hoffman, Senior Technician Reviewer, Office of Chief Counsel, TE/GE; Monice Rosenbaum, Attorney, Office of Chief Counsel TE/GE; and Cathy Vohs, Attorney, Office of Chief Counsel TE/GE, in addition to other representatives of the IRS, were instrumental in working with the IRPAC on the issues noted above.

EXECUTIVE SUMMARY

- TITLE OF PAPER:** Increase Taxpayer Education in Connection with Reporting and Other Compliance Requirements Applicable to Retirement Arrangements
- ISSUE STATEMENT:** To Recommend That Additional Information Be Available to Taxpayers on the IRS TE/GE Web site.
- REMEDY SOUGHT:** Creation of Charts for Taxpayer Use on IRS TE/GE Web site.
- IRPAC TEAM:** Barbara N. Seymon-Hirsch, Pamela Everhart, and Linda Lampkin
- IRS PARTICIPANTS:** Thomas D. Terry, Senior Technical Advisor, TE/GE; Mark O'Donnell, Director, Customer Education & Outreach, TE/GE; Roger Kuehnle, Tax Law Specialist, Guidance & Quality Review, TE/GE; Marjorie Hoffman, Senior Technician Reviewer, Office of Chief Counsel, TE/GE; Cathy Vohs, Attorney, Office of Chief Counsel, TE/GE
- HISTORY/BACKGROUND:** The requirements affecting Federal income tax withholding, information reporting, and various other compliance issues in connection with retirement arrangements have significantly changed, evolved and become more complex over the last decade. This evolution is, in part, attributable to the significant changes in the rules applicable to tax-free transfers, including rollovers, between retirement arrangements, beginning with "*direct rollovers of eligible rollover distributions*" under the Unemployment Compensation Amendments Act of 1992 (Public Law 102-318) ("UCA"), which became effective in 1993, and more recently under the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) ("EGTRRA"). With the change in, and increased flexibility of, the tax-free rollover rules brought about under the UCA and EGTRRA, many of the distinctions between tax-free rollovers, including "direct rollovers," and direct transfers are often confusing to taxpayers. Furthermore, because the income tax withholding and information reporting requirements are different for rollovers and direct transfers, it is essential that taxpayers understand what these differences are. For

because the income tax withholding and information reporting requirements are different for rollovers and direct transfers, it is essential that taxpayers understand what these differences are. For example, if a taxpayer makes a direct transfer between IRAs, because such transfer is not treated as a distribution or deemed distribution for Federal income tax purposes, Federal income tax is not required to be withheld and an IRS Form 1099-R will not be filed with the IRS or issued to the taxpayer. Furthermore, such transfer is not reportable as a distribution on the taxpayer's Form 1040. However, if that same taxpayer instead transfers his or her traditional IRA funds to another traditional IRA as a tax-free rollover, Federal income tax withholding will be required at a rate of 10% unless the taxpayer is eligible to and does in fact elect out of withholding. Furthermore, in such case, an IRS information return, Form 1099-R, will be filed with the IRS and furnished to the taxpayer who must also tax report the distribution rolled over on his or her personal income tax return Form 1040.

The increased complexity affecting retirement arrangements is also attributable to the many changes in the law governing retirement arrangements in general, including the creation, by Congress, of new types of retirement arrangements. For example, it is no longer possible to merely refer to a type of arrangement as an "individual retirement arrangement." One must now refer to a "traditional IRA" to distinguish it from the many other types of IRAs that now exist such as "Roth IRA," "SIMPLE IRA." Also, the rules governing tax compliance, including information reporting, by employers, participants, and retirement arrangement issuers, vary depending upon the type of retirement arrangement. For example, an IRS Form 8606 is required to be filed by a taxpayer with his/her Form 1040 in connection with traditional IRAs and the tracking of after-tax contributions, although it does not apply in connection with the tracking of after-tax contributions to tax-qualified plans or 403(b) arrangements.

**SUMMARY OF
RECOMMENDATIONS:**

- Develop for posting on the IRS TE/GE Website a chart, with hyperlinks to all relevant/applicable forms, instructions and publications, by retirement vehicle type, beginning with traditional individual retirement arrangements ("IRAs") under section 408(a) and (b).

Handwritten initials or mark in the bottom right corner.

- Create a quick reference chart for posting on the IRS TE/GE website regarding tax-free transferability between retirement arrangements, with appropriate hyperlinks as resources permit.

TAXPAYERS AFFECTED:

Employers, Retirement Vehicle Issuers, Retirement Plan Participants and IRA Owners

**BENEFIT TO TAXPAYERS
(PAYEES AND PAYORS):**

To increase taxpayer understanding of and compliance with tax reporting obligations and alleviate unnecessary confusion regarding tax-free transfers between retirement arrangements.

**BENEFIT TO INTERNAL
REVENUE SERVICE:**

To increase taxpayer compliance through education with respect to tax reporting and compliance requirements affecting retirement arrangements.

DISCUSSION

PRE-EGTRRA RULES ON TRANSFERABILITY:

Prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) ("EGTRRA"), Federal tax law permitted the tax-free rollover of distributions from tax-favored retirement plans to other tax-favored retirement plans based on the type of plan, the type of distribution, and the type of individual involved. For example, an "*eligible rollover distribution*" from a tax-qualified pension plan to a participant could be rolled over, tax-free, to another tax-qualified pension plan of the participant or to a traditional IRA. A spouse beneficiary could only roll over eligible funds to a traditional IRA. After-tax amounts could not be rolled over. In the case of section 403(b) annuity contracts/custodial accounts, *eligible rollover distributions* could be rolled over only to a traditional IRA or another 403(b) annuity of the participant and a spouse beneficiary could only affect a rollover into a traditional IRA. Again, any after-tax amounts could not be included in the amount rolled over. Under the pre-EGTRRA law, distributions from a traditional IRA, other than minimum required distribution amounts, could be rolled over, tax-free, into another traditional IRA. Except in the case of a traditional IRA which was a "conduit IRA", distributions from a traditional IRA could not be rolled over into a qualified pension plan or a section 403(b) annuity. In the case of an eligible deferred compensation plan of a state or local government under section 457(b) where the assets of the plan are required to be held in trust for the exclusive benefit of plan participants and beneficiaries, section 457 benefits could only be transferred to another section 457 plan and distributions from a section 457 plan could not be rolled over to another section 457 plan, a section 403(b) annuity, a tax-qualified pension plan, or a traditional IRA.

Prior to EGTRRA, tax-free direct transfers of amounts were permitted to be made between traditional IRAs, as trustee-to-trustee transfers between tax-qualified plans, and between section 403(b) funding vehicles (pursuant to Rev.Rul.90-24). Such transfers were not treated as distributions or deemed distributions to the individual for Federal income tax purposes.

EGTRRA RULES ON TRANSFERABILITY:

Effective for eligible distributions after December 31, 2001, EGTRRA significantly expanded the rules applicable to rollovers of eligible rollover distributions and the types of arrangements to and from which rollovers may be made. Under EGTRRA, eligible rollover distributions from tax-qualified pension plans, section 403(b) annuities, and governmental section 457(b) plans generally may be rolled over, tax-free, to any such plans or arrangements. Also, distributions from a traditional IRA (or a SIMPLE IRA in which the taxpayer has participated for two years or more) generally are permitted to be rolled over into a tax-qualified pension plan, section 403(b) annuity, or governmental section 457(b) plan. However, special rules apply in certain cases. For example, a distribution from a tax-qualified pension plan is not eligible for capital gains treatment or forward averaging if there was a rollover to the plan that would not have been

permitted under the law in effect prior to EGTRRA. Therefore, to preserve capital gains and averaging treatment for a tax-qualified plan distribution that is rolled over, the rollover would need to be made to a "conduit IRA" and then rolled back into a tax-qualified pension plan. Also, because amounts distributed from a governmental section 457(b) plan are subject to the section 72(t) tax on early distributions to the extent the distribution consists of amounts allocable to rollovers from another type of plan, the section 457(b) plan is required to separately account for such amounts.

EGTRRA also amended the law to permit surviving spouse beneficiaries to roll over *eligible rollover distributions* to a tax-qualified pension plan, section 403(b) annuity, or governmental section 457(b) plan in which the surviving spouse participates. EGTRRA also provides that employee after-tax contributions may be rolled over from a tax-qualified pension plan into another tax-qualified pension plan or a traditional IRA. However, in the case of a rollover of after-tax amounts from a tax-qualified pension plan to another tax-qualified pension plan, the rollover may only be made as a direct rollover. Furthermore, a tax-qualified pension plan is not permitted to accept rollovers of after-tax amounts unless the plan provides separate accounting for such contributions and the earnings thereon. After-tax contributions (including nondeductible contributions to a traditional IRA) are not permitted to be rolled over from an IRA into a tax-qualified pension plan, section 403(b) annuity, or a governmental section 457(b) plan. In the case of a section 403(b) annuity, after-tax amounts may be rolled over to another section 403(b) vehicle or a traditional IRA, but only as a direct rollover in the case of a rollover to another section 403(b) funding vehicle. Furthermore, as in the case of a tax-qualified pension plan, a section 403(b) arrangement is not permitted to accept rollovers of after-tax amounts unless the arrangement provides separate accounting for such contributions and the earnings thereon. Similar rules regarding rollovers of after-tax amounts from a governmental section 457(b) plan to another governmental section 457(b) plan or a traditional IRA apply.

Except with regard to transfers to purchase permissive service credits, EGTRRA did not change the rules applicable to tax-free direct transfers.

Develop a Chart With Hyperlinks to All Relevant/Applicable Forms, Instructions and Publications by Retirement Vehicle Type, Beginning with Traditional IRAs under Section 408(a) and (b).

Currently, IRS forms and publications are generally listed on the TE/GE website by numbers and not by retirement vehicle type. However, an individual may know that he or she owns a traditional IRA but may not know the relevant IRS forms and publications that may apply. To assist taxpayers to more easily identify and access IRS information relevant to the types of retirement arrangements in which they participate, the IRS should develop for posting, on the TE/GE Website, a chart with hyperlinks to all relevant/applicable forms, instructions and publications by retirement vehicle type, beginning with traditional IRAs. Excluded from this listing would be forms and publications that relate only to an employer, such as the Form 5500. For

example, one heading would be for Traditional IRAs (IRC section 408(a) and (b)). Under that heading would be Relevant Forms and Instructions, with a listing, brief description of and a hyperlink to the applicable IRS form or instructions. Another heading would be Relevant Publications. As IRS resources permit, this chart could be increased to identify and include hyperlinks to recent IRS guidance/news/updates regarding traditional IRAs already covered elsewhere on the TE/GE site. Similar access would be added for relevant IRS forms and publications that may apply in connection with section 403(b) arrangements, tax-qualified pension plans, SIMPLE IRAs, and Roth IRAs, etc.

CLARIFY THE BASIC RULES APPLICABLE TO TAX-FREE ROLLOVERS AND DIRECT TRANSFERS IN A FORMAT DESIGNED TO BE EASILY ACCESSIBLE BY AND UNDERSTANDABLE TO TAXPAYERS

The rules that apply in the case of tax-free direct transfers and rollovers between various retirement arrangements with regard to Federal income tax withholding, information reporting, and various other compliance requirements have significantly changed and become more complex over the last decade. To assist taxpayers in identifying and understanding the different tax compliance requirements applicable in the case of tax-free direct transfers and rollovers, it is recommended that the IRS develop a quick reference chart for posting on the TE/GE website regarding transferability. The chart should identify certain basic information such as the retirement vehicle to which an individual may transfer, the extent to which it must be done directly, whether an IRS Form 1099-R should be issued in connection with the transfer of funds, whether the transfer is reportable on the individual's personal income tax return, Form 1040, and whether the amount transferred may include after-tax amounts. It is also recommended that, as IRS resources permit, the chart include hyperlinks to other relevant information such as to definitions of terms already available on the TE/GE website.

To further illustrate the recommendations made above, attached is a draft of a sample chart regarding tax-free transferability between various retirement arrangements. For example, the attached draft addresses when an individual taxpayer may and may not transfer amounts tax-free, to what retirement vehicles an individual may transfer, and a comparison between tax-free rollovers and direct transfers. In connection with tax-free rollovers and direct transfers, the draft chart also identifies the Federal income tax withholding and reporting ramifications, including the extent to which the amount transferred is reportable by the taxpayer on Form 1040.

RECOMMENDATIONS:

Develop a Chart With Hyperlinks to All Relevant/Applicable Forms, Instructions and Publications by Retirement Vehicle Type : To assist taxpayers to more easily identify and access IRS information relevant to the types of retirement arrangements in which they participate, the IRS should develop for posting, on the TE/GE Website, a chart with hyperlinks to all

relevant/applicable forms, instructions and publications by retirement vehicle type, beginning with traditional IRAs.

Clarify the Basic Rules Applicable to Tax-Free Rollovers and Direct Transfers in a Format Designed to be Easily Accessible By and Understandable to Taxpayers : To assist taxpayers in identifying and understanding the different tax compliance requirements applicable in the case of tax-free direct transfers and rollovers, the IRS should develop a quick reference chart for posting on the TE/GE website regarding transferability, with appropriate hyperlinks to other relevant information on the TE/GE website, such as various definitional terms.

NOT REVIEWED BY THE IRS

This Chart does not address special issues relating to defined benefit plans.

TAX-FREE ROLLOVERS FROM (Distributions must be eligible for Rollover)	TAX-FREE ROLLOVERS TO	Participant	Spouse Beneficiary	Nonspouse Beneficiary	Alternate Payee Pursuant to QDRO	After-Tax Amounts	Tax Withholding (4)	Tax Reporting (Earnings 1099R)	Tax Reporting on Form 1040
403(b) Plan	Tax Sheltered Annuities (403(b))	YES	YES	NO	YES	YES (2)	NO - If Direct Rollover	YES	YES
	Qualified Plans (401(a), 403(a), 401(k))	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Individual Retirement Arrangements (IRAs) (1)	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
Qualified Plan	Governmental 457(b) Plans (3)	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Tax Sheltered Annuities (403(b))	YES	YES	NO	YES	YES (2)	NO - If Direct Rollover	YES	YES
	Qualified Plans (401(a), 403(a), 401(k))	YES	YES	NO	YES	YES	NO - If Direct Rollover	YES	YES
IRA	Individual Retirement Arrangements (IRAs)	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Governmental 457(b) Plans (3)	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Tax Sheltered Annuities (403(b))	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
Governmental 457(b)	Qualified Plans (401(a), 403(a), 401(k))	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Individual Retirement Arrangements (IRAs)	YES	YES	NO	YES	NO	NO - If Direct Rollover	YES	YES
	Governmental 457(b) Plans	YES	YES	NO	YES	YES (2)	NO - If Direct Rollover	YES	YES

(1) - All references to "IRA" shall mean a "traditional IRA"
 (2) - Rollovers of after-tax amounts must be made as Direct Rollovers. Separate accounting is required for the after-tax contributions and earnings
 (3) - Rollovers of amounts to which the additional 10% early distribution tax may apply under the section 72(t) must be accounted for separately.
 (4) - "Eligible Rollover Distributions" are not subject to income tax withholding to the extent directly rolled over to an eligible retirement plan. Otherwise, they are subject to withholding at a rate of 20%. Distributions which are not "Eligible Rollover Distributions", such as distributions from IRAs, are subject to withholding unless the payee elects not to have tax withheld. Otherwise, withholding will generally be required at a rate of 10%.
 (5) - Subject to a 1-year limitation on rollovers.

NOT REVIEWED BY THE IRS

This Chart does not address special issues relating to defined benefit plans.

TAX-FREE DIRECT TRANSFERS FROM	TAX-FREE DIRECT TRANSFERS TO	Participant	Spouse Beneficiary	Nonspouse Beneficiary	Alternate Payee Pursuant to QDRO	After-Tax Amounts	Tax Withholding	Tax Reporting (Form 1099R)	Reportable on Form 1040
403(b) Plan	Tax Sheltered Annuities (403(b))	YES	YES	YES	YES	YES			
	Qualified Plans (401(a), 403(a), 401(k))	NO	NO	NO	NO	NO	NO	NO	NO
	Individual Retirement Arrangements (IRAs)	NO	NO	NO	NO	NO			
	Governmental 457(b) Plans	NO	NO	NO	NO	NO			
Qualified Plan	Tax Sheltered Annuities (403(b))	NO	NO	NO	NO	NO			
	Qualified Plans (401(a), 403(a), 401(k))	YES	NO	NO	NO	YES	NO	NO	NO
	Individual Retirement Arrangements (IRAs)	NO	NO	NO	NO	NO			
	Governmental 457(b) Plans	NO	NO	NO	NO	NO			
IRA	Tax Sheltered Annuities (403(b))	NO	NO	NO	NO	NO			
	Qualified Plans (401(a), 403(a), 401(k))	NO	NO	NO	NO	NO			
	Individual Retirement Arrangements (IRAs)	YES	YES	YES	YES	YES	NO	NO	NO
	Governmental 457(b) Plans	NO	NO	NO	NO	NO			
Governmental 457(b)	Tax Sheltered Annuities (403(b))	NO	NO	NO	NO	NO			
	Qualified Plans (401(a), 403(a), 401(k))	NO	NO	NO	NO	NO			
	Individual Retirement Arrangements (IRAs)	NO	NO	NO	NO	NO	NO	NO	NO
	Governmental 457(b) Plans	YES	YES	YES	YES	YES			

Increase Taxpayer Education in Connection with Reporting and Other Compliance Requirements
Applicable to Retirement Arrangements

Information Reporting Program Advisory Committee
October 23, 2003

EXECUTIVE SUMMARY

TITLE OF PAPER:	Clarify Reporting of Professional Fees on IRS Form 990
ISSUE STATEMENT:	Reporting of professional fees on the Form 990 should be revised in accordance with GAAP functional reporting and government grant reporting requirements.
REMEDY SOUGHT:	Revise Form 990 to provide a specific line for reporting other professional fees.
IRPAC TEAM:	Linda Lampkin, Presenter; Barbara Seymon-Hirsch, Pamela Everhart
IRS PARTICIPANTS:	Thomas Terry, Cheryl Chasin
HISTORY/BACKGROUND:	Professional fundraising, accounting, and legal fees are reported on Form 990 on lines 30, 31, and 32 respectively. However, all other professional and contract service fees are grouped with other expenses on Line 43. Thus, it is almost impossible to determine total the professional and contract service fees in any given Form 990 or to develop statistics on these fees. Reporting in this manner is also inconsistent with the reporting of all professional and contract service fees on a separate line item that is required for GAAP functional reporting and government grant reporting.
SUMMARY OF RECOMMENDATIONS:	<ul style="list-style-type: none">(i) Expand Line 32 from "Legal fees" to:<ul style="list-style-type: none">"32a - Legal fees""32b - Professional and other contract service fees"(ii) Require all professional and other contract service fees to be reported in Lines 30, 31, 32a, and 32b.(iii) Add new instructions for Line 32b.
NUMBER OF TAXPAYERS AFFECTED:	All organizations required to file Form 990 (approximately 300,000 in 2001); all individual and corporate taxpayers who make charitable contributions; exempt organizations that make grants or donations to other exempt organizations.
BENEFIT TO TAXPAYERS (PAYEES & PAYORS):	<u>Form 990 Filers</u> : Changing the reporting in alignment with GAAP and government grant reporting requirements will help reduce filing errors and reporting burden for nonprofits. To alleviate confusion and improve accuracy and usefulness of reporting of professional services.

Individual and corporate taxpayers: These taxpayers have the opportunity to make tax-deductible contributions to Form 990 filers exempt under Internal Revenue Code section 501(c)(3).

State Regulators: The primary method of regulating organizations that solicit contributions from the public within a state's borders is through mandatory annual registration, which generally requires a copy of Form 990. Currently, approximately forty states require such registration. Typically, it is difficult and inefficient for compliance officers to access and analyze information, particularly when information is placed in an attachment to the Form. Adding the line for reporting other professional fees will simplify the data collection.

General Public: Forms 990 and 990-EZ are unique in that they are information returns – not income tax returns. The Internal Revenue Code mandates that these information returns be widely available for public inspection. Clarification of professional fees will assist donors and grant makers in their decision processes. It will expedite research on nonprofits, for governments, foundations, local United Ways, and the general public, and also meet the needs of legislators and other policy makers.

**BENEFIT TO INTERNAL
REVENUE SERVICE:**

To increase the accuracy of reporting and provide more precise information on professional services.

DISCUSSION

Background on Form 990

Exempt organizations with greater than \$250,000 in assets and gross receipts in excess of \$100,000 are required to file Form 990. This form is an information return – not a tax return – as there is generally no income tax imposed on exempt organizations.

The IRS' responsibility with respect to exempt organizations is different from the responsibility it has for other taxpayers. Its responsibilities are regulatory in nature – not revenue collecting. As such, the primary purpose of the Form 990 returns is to collect information on the programs and activities of exempt organizations to ensure that they are operating in accordance with their stated exempt purpose and are not running afoul of the rules and regulations governing their tax exempt status. In simple terms, the Form 990 serves to help ensure that exempt organizations are doing what they are permitted to do and not doing what they are not permitted to do.

This series of returns is also unique because exempt organizations are required by section 6104 of the Internal Revenue Code to make the returns widely available for public inspection. This means that organizations may be requested to provide copies of the returns that were filed with the IRS.

The number of people taking advantage of the ability to access and review the exempt organization returns on the Internet is large and constantly growing. Since 1999, PDF images of most section 501(c)(3) charitable organizations have been available at GuideStar's Web site (www.guidestar.org). A product of collaboration between the Internal Revenue Service, the National Center for Charitable Statistics ("NCCS") at the Urban Institute, and GuideStar (also known as Philanthropic Research, Inc.). The Web site now

receives about six million hits per week.

Finally, the Form 990 is unique because it is a multi-jurisdictional Form – used by state regulators as well, due to their concern regarding consumer protection with respect to charitable solicitations. Jurisdiction of exempt organizations within the states typically falls under the secretary of state or the attorney general’s office.. About twenty years ago, the IRS and the National Association of Attorneys General/National Association of State Charity Officials (“NAAG/NASCO”) reached an agreement to use Form 990 to satisfy some or all of the states’ information needs.

Thus, Form 990 essentially facilitates regulation of exempt organizations not only by the IRS but also by the general public and state regulators.

Problems with Current Reporting of Professional Services

Lack of Detail

Fees paid to professionals for fundraising, accounting, and legal services are reported on lines 30, 31, and 32 respectively. However, a large number of other professional and contract service fees are grouped with other expenses on Line 43. These other professional and contract service fees are substantial and cannot be readily separated because they are often summarized along with many other expenses on Line 43 and only detailed on an attachment. A recent study of Form 990 data¹ found that twenty five percent of **all** expenses are currently reported on Line 43 – Other expenses. A detailed review of Line 43 expenses found that one third of these “other expenses” were related to professional and other contract service fees.

Different from Accounting Standards

According to *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (The Black Book)*, a standard nonprofit sector resource on financial reporting practices, standard functional reporting, calls for grouping professional and other contract service fees.² The current Form 990 requires a detailed accounting of fundraising, legal, and accounting fees, but does not ask for detail on what is often the largest component, payments to other professional practitioners and consultants who are not employees and are engaged as independent contractors. These would include, for example, fees for data processing and software development and fees for contract employees and professional consultants. From the data requested on Form 990, one cannot generate a total for the object category of Professional and Other Contract Fees in the Statement of Functional Expense. This is necessary to be in compliance with the illustrated financial statements included in the Financial Accounting Standards Board (“FASB”) Statement of Financial Accounting Standards No. 117: Financial Statements of Not-for-Profit Organizations (See Note F, page 72).

Need for Consistency with OMB Requirements for Grant Reporting

The federal government is currently engaged in a major effort to standardize government grant budgeting and financial reporting. The focus is to use existing reporting standards whenever possible to make the process as simple and useful as possible and the

¹ “The Reporting of “Other Expenses” in Part II of the Form 990” by Kendall Golladay and Thomas Pollak, February 2003 unpublished study available from the National Center for Charitable Statistics at the Urban Institute.

² *The Black Book: Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*, Fourth Edition, by the National Health Council, Inc., and the National Assembly of National Voluntary Health and Social Welfare Organizations, Inc. Kendall/Hunt Publishing Company, Dubuque, Iowa. 1998. Page 102.

Form 990 line items are the existing standard for financial reporting in the nonprofit sector. Making a revision to Form 990 that allows the separation of other professional and contract service fees from all "other expenses" would bring Form 990 into better compliance with GAAP and Black Book recommendations. Then Form 990 reporting could be used as the standard for reporting on government grants, ensuring that there would be uniform reporting on the various reports required from nonprofits.

RECOMMENDATIONS

We suggest the following changes in the Form 990:

- Expand Line 32 from “Legal fees” to:
 - “32a - Legal fees”
 - “32b – Professional and other contract service fees”
- Require **all** professional and other contract service fees to be reported in Lines 30, 31, 32a, and 32b.
- Drop Line 43e (one of five lines available for detailing other expenses) to make room for the addition of Line 32b. As one-third of the expenses currently reported on Line 43 would be moved to new Line 32b, this elimination seems warranted.

Instructions for the new Line 32b could read as follows:

“Line 32b - Professional and Other Contract Service Fees

“Enter the amount of fees and expenses of professional practitioners, consultants and contract service providers (other than for professional fundraisers, accountants or attorneys, which should be reported on Lines 30, 31, and 32a, respectively) who are not employees of the reporting organization and are engaged as independent contractors for specified services on a fee or other contract basis. Examples of such contract service fees include contract payments to independent professional consultants; actuarial fees; data processing services (outside vendor); investment management fees (not commissions on transactions); contracted software development; media production costs; internet, email and website services (outside vendors); contract temporary employee services; and other non-payroll personal service fees.”

NUMBER OF TAXPAYERS AFFECTED

The organizations that file Form 990 would be directly affected, a total of about 300,000 in 2001. All individual and corporate taxpayers that take deductions for donations made to charities would also be able to better use the information on Form 990 to make decisions on the selection of charities, if reporting were improved.

BENEFIT TO TAXPAYERS (PAYEES & PAYORS)

Form 990 Filers: Changing the reporting to align with GAAP and government grant reporting requirements will help reduce filing errors and reporting burden for nonprofits.

Individual and corporate taxpayers: These taxpayers have the opportunity to make tax-deductible contributions to Form 990 filers exempt under IRC Section 501(c)(3). Therefore, having full information in a standard format will help improve decision making.

State regulators: The primary method of regulating organizations that solicit contributions from the public within a state's borders is through mandatory annual registration, which generally requires a copy of Form 990. Currently, about 40 states require such registration. Typically, it is difficult and inefficient for compliance officers to access and analyze information, particularly when information is placed in an attachment to the form. Adding the line for reporting other professional fees will simplify the data collection.

General Public: Forms 990 and 990-EZ are unique in that they are information returns – not income tax returns. The Internal Revenue Code mandates that these information returns be widely available for public inspection. Clarification of professional fees will assist donors and grant makers in their decision processes. It will expedite research on nonprofits, for governments, foundations, local United Ways, and the general public, and also to meet the needs of legislators and other policy makers.

BENEFIT TO INTERNAL REVENUE SERVICE

Finally, accurate statistics cannot be currently generated about the use of professional services by exempt organizations. Requiring a detailed reporting of other professional and contract expenses will reduce the resources needed to acquire the needed data from attachments, if it happens to be detailed on an attachment. This will help the Service increase its efficiency in processing, public disclosure, and audits of returns.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

October 1, 2003

Connie Davis
Vice Chair

VIA HAND DELIVERY

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

The Honorable Mark W. Everson, Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW, Rm. 3000
Washington, DC 20224

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Internal Revenue Service
CC:PA:RU (Notice 2003-53)
Room 5226
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington DC 20044

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

RE: Notice 2003-53, Coverdell Education Savings Accounts

Dear Commissioner:

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I am writing to provide comments in response to Internal Revenue Service ("IRS") Notice 2003-53 (the "Notice"), which provides guidance regarding certain reporting requirements and transition rules applicable to Coverdell Education Saving Accounts ("CESAs") described in Section 530 of the Internal Revenue Code. We very much appreciate the opportunity to provide comments before this guidance is finalized for 2004 and future years.

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

IRPAC would like to commend the IRS for responding to the comment letters addressing the compliance and reporting challenges faced by CESA trustees and custodians arising from the publication of the 2003 Forms 5498-ESA and 1099-Q and related instructions and for announcing the substantial modification contained in this Notice. We appreciate the thoughtful consideration that has resulted in the

postponement of the requirements to report on Form 1099-Q the basis and earnings portions of gross distributions from CESAs and transfers to another CESA (hereinafter referred to as "trustee-to-trustee transfers"), in cases where a CESA trustee or custodian is unable to calculate or report such amounts.

In responding to the Notice, IRPAC will focus primarily on three major topics: (1) reporting of basis and earnings by CESA custodians and trustees; (2) reporting of trustee-to-trustee transfers by CESA custodians and trustees; and (3) the Form 5498-ESA reporting deadline. While we understand and support the need for compliance and accurate reporting, we believe that tax reporting is most effective when completed by the person or institution that has access to all of the information required for accurate and complete reporting. To that end, with respect to 2004 and future years, we respectfully request that the Service continue to place the responsibility for tracking and reporting basis and earnings in CESAs with the CESA account owner, rather than requiring such tracking and reporting by CESA trustees and custodians, for the reasons discussed below.

In addition to the above, with respect to the Form 5498-ESA reporting deadline, due to the time it takes for CESA trustees and custodians to process transactions and reconcile and test their records, we strongly urge the Service to consider extending the current April 30 deadline for furnishing Copy B of Form 5498-ESA to CESA account holders to the May 31 IRS delivery date or later.

I. Reporting of Basis and Earnings

This section discusses why a CESA trustee or custodian will be unable to provide many CESA account owners and the IRS with an accurate report of basis and earnings on CESA distributions. Any type of tax reporting is useful for taxpayers or the IRS only if the report is accurate and reliable so that it may be used by taxpayers in self-reporting and by the IRS in verifying compliance with tax laws. Where the report is not accurate, a taxpayer is unable to rely on the report, and the report itself may increase taxpayer confusion and noncompliance.

Many CESA trustees and custodians have not tracked basis for CESAs, as such information previously has not been required to be reported by such trustees and custodians, nor have such trustees and custodians been legally obligated to maintain basis information. When they were created, CESAs were patterned after Individual Retirement Accounts ("IRAs"), and many of the rules and reporting requirements were the same, including the reporting of the taxable amount of a distribution by the taxpayer. Consequently, absent the historical contribution and distribution information applicable to individual CESA account holders, basis and earnings information is not available to the CESA trustee or custodian for reporting to the IRS. Relying on CESA trustees and custodians to report such information based on little or no supportive historical data does not seem appropriate when CESA account holders themselves have the available information to report accurately.

Assuming the necessary historical contribution and distribution information could be obtained or reconstructed for existing CESAs, the systems modifications necessary to report basis and earnings information would be substantial and costly. As a result, given the low contribution limits and small sums accumulated in CESAs, many financial institutions would discontinue offering these accounts if such mandatory reporting were required.

Although CESA trustees and custodians are not in the best position to maintain and track the information necessary to report accurate basis and earnings information, we believe that CESA trustees and custodians could provide year-end statements that include cumulative contribution amounts. In fact, currently, most such trustees and custodians provide these statements to CESA account holders to assist them in achieving compliance with the current tax reporting rules. Such statements, along with gross distribution information on Form 1099-Q and increased taxpayer information and education around calculation of basis and earnings on CESA distributions, would help ensure taxpayer compliance and complete and accurate tax reporting.

II. Reporting of Transfers

For many of the same reasons discussed above, it is extremely difficult for CESA trustees and custodians to capture and report trustee-to-trustee transfers. In addition to the requirement in the Form 1099-Q for CESA trustees and custodians to separately report trustee-to trustee transfers distributed out of a CESA, IRS Form 5498-ESA requires such trustees and custodians to report trustee-to-trustee transfers received as well.

CESA trustees and custodians have never been required to capture, maintain, and report trustee-to-trustee transfers to/from like account registrations when the transaction was not otherwise reportable. To require CESA trustees and custodians to do so mid-stream would be extremely expensive from a systems implementation perspective and difficult, if not impossible, due to the level of activity in CESAs. Moreover, we believe data would tend to be incomplete and inaccurate over time because of the potential level of transfer activity between CESA trustees and custodians. Consequently, we strongly urge the Service to reconsider this requirement and continue the current regime of non-reportable direct trustee-to-trustee transfers between like CESAs.

III. Form 5498-ESA Reporting Deadline

The Form 5498-ESA reporting instructions require that CESA trustees and custodians furnish the Form to the IRS by May 31 and to CESA account holders by April 30. The April 30 deadline, however, does not provide CESA trustees and custodians with sufficient time to reconcile and test their records to be able to prepare a complete and accurate report to account holders, since this date is a mere 15 days after the due date for making prior year CESA contributions. In addition, this date does not appear to consider the time needed for CESA trustees and custodians to receive contributions that are mailed via the U.S. Postal Service on April 15.

11/92

Honorable Mark W. Everson, et. al.
October 1, 2003
Page 4

While we recognize that there is a statutory June 1 date for CESA account holders to make "timely" excess contribution corrections, we strongly recommend that the Service extend the April 30 deadline for providing a copy of Form 5498-ESA to a taxpayer to May 31 (the due date for filing IRS Form 5498 for IRAs). We also recommend that the Service work with the Treasury Department to support a legislative change to extend the June 1 correction deadline to October 15 (the latest date permitted for IRA owners to correct "excess contributions").

IRPAC appreciates the consideration that the IRS has given to the comment letters that it received regarding the reporting scheme originally proposed in connection with Forms 1099-Q and 5498-ESA, and the related instructions. We believe that the IRS has taken strides to balance the needs of CESA trustees and custodians, taxpayers, and the Federal Government.

We would be happy to provide further information on any of our comments contained herein, and we look forward to continuing our work with the IRS on these important reporting issues as the Service works toward finalization of its guidance for 2004 and thereafter. Please feel free to contact Pamela Everhart at (617/563-3902) with any questions or comments that you may have regarding the issues raised in this letter.

Sincerely,



Michael O'Neill
Chair, IRPAC

cc: Evelyn Petschek, Commissioner, TE/GE
Thomas D. Terry, Senior Technical Advisor, TE/GE
Emily Parker, Acting Chief Counsel
Sarah H. Ingram, Division Counsel/Associate Chief Counsel, TE/GE
Monice L. Rosenbaum, Associate Chief Counsel, TE/GE
Robert C. Harper, Jr., TE/GE
Gilford Queen, Tax Law Specialist, Forms and Publications
James Brokaw, Branch Chief EO1, Acting Chief EO2, TE/GE
Susan Brown, Office of the Tax Legislative Counsel, U.S. Treasury Department

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INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

September 30, 2003

Connie Davis
Vice Chair

Steven T. Miller
Director, Exempt Organizations
Internal Revenue Service
1750 Pennsylvania Avenue, NW
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

Re: Addition of Line for Organizational E-mail Address to Form 990

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Mr. Miller:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with recommendations regarding the addition of a line for an organizational e-mail address to Form 990.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

IRPAC recommends that the Form 990 be revised to provide a line for the organizational email address. The Service and the many other users of this form often find it difficult to contact nonprofit organizations based on the information contained on the Form 990. In the 2001 Form 990, Line G, Website, was added for the organization's URL. However, the addition of an e-mail address for the organization would help facilitate contact.

We suggest that the existing Line G be divided into two lines:

- G (a) Web site and
- G (b) Organizational email

Handwritten initials and date: "H 9/30"

Steven T. Miller
September 30, 2003
Page 2

Space for the line could be obtained by shortening Line K to read:

“Check here if the organization’s gross receipts are normally not more than \$25,000 and see instructions.”

If you have any questions concerning these comments, please call Linda M. Lampkin at (202) 261-5806.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Neill", with a long horizontal flourish extending to the right.

Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**SMALL BUSINESS & SELF-EMPLOYED
SUBGROUP REPORT**

**JEFFREY A. ADELSTONE, EA
CAROLE R. CONKLIN, EA
RONALD C. MOONIN, CPA, SUBGROUP CHAIRMAN**

OCTOBER 23, 2003

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**SMALL BUSINESS/SELF EMPLOYED
SUBGROUP REPORT**

The SB/SE Subgroup addressed a number of information reporting issues during 2003, including standardized format and indicators for non-matching Schedules K-1, establishing a procedure for small case offers in compromise, non-conforming format of Wage and Tax Statements (Form W-2) issued by federal employers, simplification of the distribution codes on Form 1099-R, electronic filing issues related to the Form 1040 series, tax reporting by limited liability companies, taxpayer burden reduction, disclosure of information, continuing professional education, power of attorney issues, and the multitude of IRS mailing addresses. In addition, the SB/SE Subgroup responded to a request from the IRS Oversight Board for input on the future direction of electronic tax administration and the proposal to extend the filing due date for electronically filed individual income tax returns. The items addressed by the SB/SE Subgroup are:

- **Letter** - (*Whitlock*) Reporting of Information by Limited Liability Companies
- **Letter** - (*Conklin*) Representative Appointments and Authorizations Under Form 706
- **Letter** - (*Conklin*) Form 23 Optional Consent to Disclose Prospective Enrolled Agents Name and Mailing Address
- **Letter** - (*Conklin*) CPE Credit for Federally Authorized Tax Practitioners

In the coming year, the SB/SE Subgroup will work with the LMSB Subgroup to streamline the information reported on Form 1099-R. In addition, the SB/SE Subgroup will continue to work with the IRS on the revisions to the Form Schedule K-1 to facilitate the matching of K-1 information with information reported on Form 1040.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7557, Washington, DC 20224

Michael O'Neill
Chair

April 17, 2003

Connie Davis
Vice Chair

Mr. Curt Wilson
Assistant Chief Counsel
Procedure and Administration
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Re: Limited Liability Companies

Dear Mr. Wilson:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with comments regarding the reporting of information by Limited Liability Companies ("LLCs").

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

An LLC is a relatively new business structure allowed by state statute. All 50 states have some type of LLC legislation and the LLC is deemed to be the fastest growing form of business structure in the United States. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, including management flexibility and the benefit of pass-through taxation. With over 2 million LLCs with the ability to be taxed for federal income tax purposes as either a sole proprietor, a partnership, or a corporation, this increasingly popular form of business entity is certain to increase the demand for clarity in IRS publications, forms, and guidance.

Identification of LLC on Income Tax Returns

Generally, when an LLC has only one member, the fact that it is an LLC is ignored or "disregarded" for purposes of filing a federal income tax return. If the only member of the LLC is an individual, the LLC's income and expenses are reported on Form 1040, Schedule C, E, or F. If the LLC is a multi-member entity not electing corporate taxation, the LLC is taxed as a partnership using Form 1065. If the LLC elects to be taxed as a corporation, the LLC's income and expenses are reported on the corporation's return utilizing Form 1120 or Form 1120S if the corporation has filed a Form 2553 electing S status.

If an LLC does not wish to "default" as a single member to a Form 1040 or as a multi-member to a Form 1065, it must file a Form 8832 to elect a change in its status. An LLC is allowed to change its federal tax classification status once every five years by filing a new Form 8832.

Form 1065 currently asks the question "Is this a limited liability company?" In order for the IRS to identify all LLCs, IRPAC recommends that this question appear on Form 1040 schedules C, E, and F as well as on Forms 1120 and 1120S. Additionally, since an LLC can change its federal tax classification once every five years, it is recommended that an additional line item "Date of last election" be added to the forms. These form changes would enable the taxpayer, the IRS, and the tax practitioner on behalf of the taxpayer to have all the necessary information to file complete and accurate tax returns and related forms.

Clarification of Payroll Tax Liability for Single Member LLCs

An important example of the complexity of LLCs relates to the confusion surrounding the single member LLC and the responsibility of the single member, although a disregarded entity, for payroll taxes.

Regulations issued under section 7701 of the Internal Revenue Code ("IRC") provide for a disregarded entity. Section 301.7701-2(c) (2) of the Procedure and Administration Regulations further provides that a business entity that has a single owner and that is not a corporation under section 301.7701-2(b) is disregarded as an entity separate from its owner for federal tax purposes. As employment tax responsibilities rest with an employer, the common law rules for determining the identity of the employer ordinarily apply. Under these rules, the person for whom services are performed as an employee is generally considered the employer for purposes of the employment tax provisions. An employer generally is required to withhold and remit applicable taxes from employee wages, pay employer taxes, make timely tax deposits, file employment tax returns, and issue wage statements to employees.

IRC sections 1361(b)(3) and 301.7701-2(c)(2) cause the owner of a disregarded entity to be treated as the employer for the disregarded entity's employees for federal employment tax purposes. Accordingly, the owner, or disregarded entity, is the responsible party for complying with all the employment tax obligations related to those employees of the LLC.

While guidance has been issued under Revenue Procedure 99-6, problems persist with LLCs, particularly single member LLCs, related to the ability of the IRS to identify the party responsible for payroll taxes. Contradictions exist between such IRS publications as Revenue Procedure 99-6, the instructions for Form SS-4, Application for Employer Identification Number, and the relatively new Publication 3402, Tax Issues for Limited Liability Companies. IRPAC recommends that the IRS revise these publications to clarify the payroll tax liability of single member LLCs. In addition, the IRS should modify Forms 940 and 941 to include a check box indicating whether the LLC is a "Single Member Limited Liability Company" and to provide a line for the name of the single member and employer identification number (EIN).

These revisions would serve to reinforce the personal liability for payroll taxes by a single member, individually, as well as to notify the IRS of the responsible party for the collection of any delinquent taxes. The revisions would also help alleviate the confusion caused by state taxing authorities that use EINs that do not match EINs assigned by the IRS to LLCs when a sole proprietor becomes a single member LLC.

Clarification of Self-Employment Tax Liability Related to LLCs

The IRS should publish further guidance regarding the responsibility of LLCs to pay self-employment taxes.

Proposed regulations published under IRC section 1402 as of January 13, 1997 have left owners and those forming LLCs with great confusion as to the applicability of self-employment tax. What distributive shares of income should be included in net earnings from self-employment, particularly in light of bifurcation of interest in the LLC?

IRC Section 1402(a)(13) allows some or all of the income from self-employment earnings to be excluded from self-employment tax if any of the following conditions exist:

- a. The member is classified as a limited partner,
- b. The member owns more than one class of membership interest, or
- c. The member bifurcates his or her distributive share.

Of particular concern is the issue of professional services or service partners. The proposed regulations provide that members of Professional Service LLCs will not be treated as limited partners if all of the activities of the LLC involve the performance of services in the field of:

- a. Health,
- b. Law,
- c. Engineering,
- d. Architecture,
- e. Accounting, or
- f. Consulting.

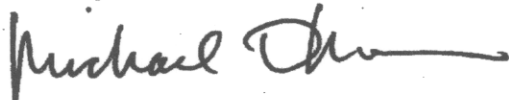
Curt Wilson
April 17, 2003
Page 4

If an LLC of is engaged in providing professional services in one of the fields listed above, the proposed regulations require that all member income from such an entity be treated as self-employment income. The troubling issue here is the field of consulting. While most states do not require a member of a consulting group to be a "licensed" consultant, this leaves room for investor, non-consultants, to be members of an LLC. Under the proposed regulations, passive or investor members would be subject to self-employment tax in direct contradiction to the social security definition of income subject to such tax.

The IRPAC recognizes the complexity and increasing difficulty of providing guidance to taxpayers filing as LLCs. IRPAC welcomes the opportunity, however, to comment and to make recommendations in response to any enhancements proposed by the IRS in its current publications, forms, or procedures.

If you wish to discuss these comments further, please call Beanna J. Whitlock, EA at (800) 465-2767.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Neill", with a long horizontal flourish extending to the right.

Michael O'Neill, Chair
Chair, IRPAC

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

September 29, 2003

Connie Davis
Vice Chair

Mr. John N. Harris
Tax Law Specialist, Wage and Investment
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

Re: Representative Appointments and Authorizations Under Form 706

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Mr. Harris:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with recommendations concerning certain discrepancies between Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and Publication 216, Conferences and Practice Requirements.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Form 706 and Publication 216 are somewhat ambiguous regarding the appointment, authorization, and limitations of a power of attorney for attorneys, certified public accountants ("CPAs"), and enrolled agents ("EAs"). For example, Form 706, Page 2, Part 4 provides for an "Authorization to receive confidential tax information under Reg. Sec. 601.504(b)(2)(i); to act as the estate's representative before the IRS; and to make written or oral presentations on behalf of the estate if return prepared by an attorney, accountant, or enrolled agent for the executor." However, Publication 216, Reg. Sec. 601.504(b)(2), Estate matter, states the following:

A power of attorney is not required at a conference concerning an estate tax matter if the individual seeking to act as a recognized representative presents satisfactory evidence to Internal Revenue Service officials that he/she is—

- (i) an individual described in Reg. Sec. 601.502(a); and
- (ii) the attorney of record for the executor, personal representative, or administrator before the court where the will is probated or the estate is administered.

An individual recognized by Reg. Sec. 601.502(a) is "...an individual who is appointed as an attorney-in-fact under a power of attorney and is a member of one of the categories described in Reg. Sec. 601.502(a) and who files a declaration of representation, as described in Reg. Sec. 601.502(b)." The regulation goes on to enumerate the individuals included in these categories as attorneys, CPAs, EAs, enrolled actuaries, and other individuals who have temporary recognition due to special circumstances such as status with the taxpayer and/or the preparer of the return. Publication 216, however, only states that the power of attorney is not required "at a conference." The Instructions for Form 706 also limit the authority to represent only where a will is probated or an estate is administered. In most instances, neither CPAs nor EAs are recognized to represent an estate in probate court or estate administration jurisdictions.

The Instructions for Form 706, Part 4 (page 10) state: "Completing the authorization on page 2 of Form 706 will authorize one attorney, accountant, or enrolled agent to represent the estate and receive confidential tax information, but will not authorize the representative to enter into closing agreements for the estate."

IRPAC recommends that the disparity between the Form 706 and its Instructions be resolved. IRPAC also believes that the inconsistency between Form 706 and Publication 216 for an estate matters exemption from filing a power of attorney (Reg. Sec. 601.504(b)(2)) and the absence of an appointment by the taxpayer (the executor, personal representative, or estate administrator) of the representative (Reg. Sec. 601.501(b)(9)) needs to be resolved. Language in Form 706, the Instructions for Form 706, and Publication 216 should be made to conform to one another. Otherwise, confusion concerning authorized representation will continue to proliferate.

IRPAC appreciates the opportunity to provide these comments and would like to express its thanks to Mary L. Javor, EA, 2002 SB/SE Subgroup Chair, for the research she did last year on this issue. If you wish to discuss these comments further, please call Carole R. Conklin, EA, at (810) 227-8364.

Sincerely,



Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison
Mary L. Javor, EA

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

Connie Davis
Vice Chair

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

September 29, 2003

Mr. Brian Downey
Director, Office of Professional Responsibility
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Form 23, Optional Consent to Disclose Prospective Enrolled Agent's Name and Mailing Address

Dear Mr. Downey:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with recommendations regarding disclosure of a prospective enrolled agent's ("EAs") name and mailing address.

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

IRPAC recommends that the Form 23 be revised to provide for disclosure of a prospective EA's name and mailing address for the sole purpose of obtaining educational materials, seminars, and classes to enable the prospective EA to study for the Special Enrollment Exam ("SEE"). After the prospective EA has passed the exam, the same information could be used to maintain the EA's accreditation.

The method of disclosure could be accomplished by the addition of an optional "education information only" checkbox at the bottom of Form 23. The checkbox wording could state as follows: "I, the undersigned applicant, authorize the disclosure of my name and mailing address by the Office of Professional Responsibility to accredited educational providers in order to obtain information about their materials, seminars, and classes concerning enrolled agent education." With this authorization, the Office of Professional Responsibility would be absolved of any liability with respect to a candidate's privacy, while affording candidates and/or EAs access to materials aiding in SEE preparation and/or EA continuing education.

Brian Downey
September 29, 2003
Page 2

IRPAC appreciates the opportunity to provide these comments and would like to express its thanks to Mary L. Javor, EA, 2002 SB/SE Subgroup Chair, for the research she did on this matter. If you have any questions, please call Carole R. Conklin, EA, at (810) 227-8364.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael O'Neill", with a long horizontal flourish extending to the right.

Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison
Mary L. Javor, EA

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INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

October 1, 2003

Connie Davis
Vice Chair

Mr. Brian Downing
Director, Office of Professional Responsibility
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Carol Kassem
Ernest Molinari

Re: CPE Credit for Federally Authorized Tax Practitioners

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Scymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Mr. Downing:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I want to thank you for the opportunity to provide the Internal Revenue Service ("IRS") with recommendations regarding continuing professional education ("CPE") credits for serving on IRS Advisory Councils/Committees.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Individuals who serve on IRS Advisory Councils/Committees engage in educational activities that may meet the CPE requirements established by a state, commonwealth, and/or the U. S. Department of Treasury. IRS Advisory Council/Committee members attend presentations by IRS officials on a variety of federal tax matters, such as information reporting and taxpayer compliance matters. In addition, members communicate with IRS upper management on tax issues of mutual concern, devote a considerable amount of time discussing such issues within subgroups and with the general public, and do research and write position papers and comment letters recommending specific improvements in the tax system. As an example, IRPAC members typically participate in a minimum of nine (9) hours of discussions on federal tax matters during each of the Committee's two-day working sessions. There are four (4) to five (5) such scheduled meetings as well as a public meeting per year.

IRPAC believes that the hours of service devoted to IRS Advisory Council/Committee work should count toward the 32 continuing education credits required for enrolled

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Brian Downing
October 1, 2003
Page 2

agents.

Attorneys and CPAs also are required by states and commonwealths to meet annual continuing education requirements. A letter documenting their service on IRS Advisory Councils/Committees could assist them in satisfying their obligations, as well.

These CPE letters could be issued by the Office of Professional Responsibility or through the Office of National Public Liaison, as appropriate.

IRPAC appreciates the opportunity to comment on this matter and would like to express its thanks to Mary L. Javor, EA, 2002 SB/SE Subgroup Chair, for the research she did last year on this matter. If you wish to discuss these comments further, please call Carole R. Conklin, EA, at (810) 227-8364.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Neill", with a long horizontal flourish extending to the right.

Michael O'Neill
Chair, IRPAC

cc: Robin Marusin, Chief, Liaison and Tax Forums Branch
Beanna J. Whitlock, Director, National Public Liaison

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**WAGE & INVESTMENT
SUBGROUP REPORT**

**DOROTHY ATCHISON
KAREN CARTER
CONNIE L. DAVIS, SUBGROUP CHAIR**

OCTOBER 23, 2003

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**WAGE & INVESTMENT
SUBGROUP REPORT**

During 2003, the W&I Subgroup worked with IRS representatives from various units on several information reporting issues of interest to the payroll and employment tax community. The following projects were completed by the W&I Subgroup:

- **Name and SSN Mismatches** – In response to discussions between the W&I Subgroup and IRS, the Service issued a September 23, 2003 letter to the IRPAC clarifying the reporting penalties for filing Forms W-2 with mismatches between employee names and Social Security Numbers (“SSNs”). This letter replaced a January 13, 2003 letter to the American Society for Payroll Management. The IRPAC greatly appreciates the additional clarification provided in the replacement letter. The W&I Subgroup, however, continues to believe that employers should be given access to the TIN Matching System to identify potential name and SSN discrepancies and correct SSNs before receiving penalty notices. The IRS should work with the Treasury Department to support a legislative change to make the TIN Matching System available to employers for this purpose. Additionally, the IRS should publish “reasonable cause” guidelines for use by employers in avoiding or abating proposed penalties for reporting an incorrect name or SSN on Form W-2. Such guidelines should incorporate input from other stakeholder Federal agencies such as the Social Security Administration and Citizenship and Immigration Services.

- **Form W-4 for Nonresident Alien Employees** – In the IRPAC’s May 1, 2003 letter to the Office of Chief Counsel, the Committee recommended that the development of a separate Form W-4 for nonresident aliens be considered for publication on the Guidance Priority List for 2003-04. Such a form is needed by both employers and employees to address the unique and complex withholding rules applicable to non-citizens temporarily working in the U.S. On June 17, 2003 the IRS wrote to the IRPAC to confirm that this recommendation would be reviewed for inclusion in the Guidance Priority List. Subsequent conversations with representatives from the Office of Chief Counsel indicate that the IRPAC’s recommendation will be addressed as part of the section 1441 regulation project. The W&I Subgroup will continue to work with the Office of Chief Counsel in its review of these regulations.

In the coming year, the W&I Subgroup will work with the IRS in finalizing revisions to the Form 941 to in order to provide more clarity and reduce taxpayer burden.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

SEP 23 2003

Mr. Michael O'Neill, Chairman
Ms. Connie Davis
Information Reporting Program Advisory Committee
Wage & Investment Subgroup

Dear Mr. O'Neill and Ms. Davis:

I am responding on behalf of SB/SE in response to your inquiries about information reporting penalties for filing Forms W-2 with mismatches between employee names and Social Security Numbers (SSNs). You asked for clarification of my January 13, 2003, letter to the American Society for Payroll Management (ASPM) discussing reasonable cause for a waiver of the penalty and the availability of a TIN Matching program for employers.

This letter reviews the information reporting penalty and waiver rules, and then address the issues listed in the January 13, 2003, letter to ASPM. The responses in this letter should be read as superseding the responses given to ASPM.

Information Reporting Penalty Rules

Sections 6721 and 6722 - Penalties

Forms W-2 are subject to information reporting penalties under section 6721 and 6722 of the Internal Revenue Code. Section 6721 imposes a penalty for any failure to file an information return timely, for any failure to include all required information, or for the inclusion of incorrect information. The penalty is \$50 per return, to a maximum limit of \$250,000 per filer per year. The amount of the penalty may be reduced to \$15 per return, to a maximum of \$75,000 per year, if the failure is corrected within 30 days of the due date. The penalty may be reduced to \$30 per return, to a maximum of \$150,000 per year, if the failure is corrected by August 1. The maximum annual penalties are lowered for filers with gross receipts of less than \$5 million. In the case of failures due to intentional disregard of the information reporting requirements, the penalty is the greater of \$100 per return or 10 percent of the amount to be reported correctly, with no annual limit.

Section 6722 provides for a penalty in the case of any failure to furnish a payee statement on or before the required date, any failure to include the required information, or the inclusion of incorrect information. The penalty is \$50 per payee statement up to a maximum amount of \$100,000 per filer per year. In the case of intentional disregard, the penalty is the greater of \$100 per statement or 10 percent of the amount to be reported correctly, with no annual limit.

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Section 6724 - Waiver for Reasonable Cause

Section 6724 provides for a waiver of these penalties due to reasonable cause. The regulations provide that the penalty will be waived only if the filer establishes that either (1) there are significant mitigating factors with respect to the failure; or (2) the failure arose from events beyond the filer's control (an impediment). In addition, the filer must establish that the filer acted in a responsible manner, both before and after the failure occurred. See § 301.6724-1(a)(2), Administrative and Procedural Regulations.

Significant Mitigating Factors

Section 301.6724-1(b) of the regulations provides that "significant mitigating factors" may include the fact that the filer was never required to file this type of information return or statement before, or that the filer has an established history of complying with this information reporting requirement in the past, with consideration given to the filer's penalty history.

Events Beyond the Filer's Control

Section 301.6724-1(c) provides that "events beyond the filer's control" may include such impediments as the unavailability of business records or actions of other parties such as the Internal Revenue Service, the filer's agent, or the payee. We understand that you are primarily concerned with penalties imposed on Forms W-2 for incorrect social security numbers. The regulations provide that in order to establish reasonable cause based on the actions of the payee (*i.e.*, an employee who provides an incorrect social security number), the filer must show that the failure resulted from the failure of the payee to provide information to the filer, or that the failure resulted from incorrect information provided by the payee upon which information the filer relied in good faith. See § 301.6724-1(c)(6). Thus, an employer may claim that the failure to include correct information on the Form W-2 was due to the actions of the payee, if the employer received a social security number from its employee, relied on that number in good faith, used it on a Form W-2, and subsequently received a penalty notice from the IRS notifying the employer that the employee's SSN was incorrect.

Acting in a Responsible Manner

As noted above, to qualify for a waiver of the penalties imposed by sections 6721 and 6722, the employer must also demonstrate that it acted in a responsible manner, both before and after the failure. Section 301.6724-1(d) of the regulations provides that "acting in a responsible manner" means that the filer exercised reasonable care, which is the standard of care that a reasonably prudent person would use under the circumstances, and that the filer undertook significant steps to avoid or mitigate the failure, including attempting to prevent an impediment or failure, acting to remove the

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impediment, and rectifying the failure promptly. Where a filer is seeking a waiver of the penalty based on the failure of a payee to provide a correct taxpayer identification number (TIN), special requirements apply for establishing that the filer acted in a responsible manner. See § 301.6724-1(f). Under these rules, an employer would have to show that it made an initial solicitation for the employee's SSN at the time the employee began work. Following that solicitation, no additional solicitation for the SSN is required unless the IRS notifies the employer that the employee's SSN is incorrect. Following receipt of such IRS notice, the employer may be required under the regulations to make an annual solicitation for the correct SSN. The employer may be required to make up to two annual solicitations following IRS notices.

The first annual solicitation of the employee's SSN is required only if the IRS notifies the employer that the employee's SSN is incorrect, and if the employer's records contain that incorrect SSN at the time it receives the notice. The solicitation for the SSN must be made by December 31 of the year in which the penalty notice was received, and may be made by mail, telephone or in person. The solicitation need not be made if there will not be any reportable payments to that employee in that year. A second annual solicitation would be required if the employer receives an IRS notice of incorrect SSN for the employee in any subsequent year. An employer may rely on the SSN that an employee provides in response to a solicitation, and the employer may use that SSN in filing a Form W-2 for that employee. The employer is required by the regulations to make only two annual solicitations. If the employer receives an IRS notice of an incorrect TIN after having made two annual solicitations and reporting the TIN provided by the employee, the employer would not be required to make further solicitations. The employer's initial and two annual solicitations will demonstrate that the employer has acted in a responsible manner before and after the failure and will establish reasonable cause under the regulation.

I have asked Counsel to address the questions as set forth in the January 13, 2003 letter.

Questions

1. Reasonable Cause

- a. Will the IRS consider employer records containing valid paper or electronic Forms W-4 to satisfy reasonable cause for penalty purposes?
- b. Will documented solicitation of Forms W-4 from each new employee be adequate? There appears to be no actual requirement that an employee provide a completed Form W-4.

Response: The Form W-4 is required from employees upon commencement of employment pursuant to section 3402(f)(2)(A) and should be retained in the employer's records. An employer relying in good faith on the SSN provided by the employee on the Form W-4 and using that SSN on the Form W-2, will have shown that the failure to file a

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correct return was due to an event beyond the employer's control (*i.e.*, information provided by the payee).

An employer who retains the Form W-4 in its records will be able to document that the employer made an initial solicitation of a TIN and thus acted in a responsible manner. If the IRS notifies the employer that the SSN is incorrect, then the Form W-4 may be used for any required annual solicitations of the employee's SSN. Copies of the W-4s should be retained in the employer's records to document that the employer acted in a responsible manner by making the required annual solicitations. Note that for purposes of establishing reasonable cause in connection with the penalty provisions, it is the solicitation of the employee's SSN that is important, not the response. An employer who establishes that it made the proper solicitations will meet the reasonable cause requirements regardless of whether the employee returned a completed Form W-4.

2. Will the IRS TIN Matching program be available to employers for use in matching employee names and SSNs?

a. Will the IRS TIN Matching and/or SSA's SSN verification systems be considered equivalent systems for the purpose of information reporting accuracy penalties? In other words, would there be any advantage or disadvantage of using one system over the other, with respect to such penalties?

Response: The IRS TIN Matching program is not available to employers for matching employee names and SSNs. TIN Matching applies only with respect to payments subject to backup withholding. Such payments do not include wages paid to employees. Legislation would be required to apply the TIN Matching program to employment tax reporting.

An employer may check SSA's SSN verification system (known as EVS) to verify its employees' names and SSNs, but there is no federal tax requirement to do so. As outlined above, reasonable cause for purposes of waiving information reporting penalties depends upon the employer's solicitation of the SSN from the employee. Nevertheless, EVS may be a useful, optional way for employers to identify potential discrepancies and correct SSNs before receiving penalty notices.

Generally, EVS and IRS records are consistent. However, it is important to note that the database used by SSA to match names and SSNs is not identical to the IRS database. That is why mismatches reported under EVS are not considered IRS notices and do not trigger any resolicitation requirements under IRS rules for reasonable cause waivers. If an employer receives a mismatch response from EVS, in order to avoid a possible IRS penalty notice based on an IRS mismatch, the employer may wish to resolicit the employee's SSN and try to obtain correct information prior to filing the Form W-2.

3. Reasonable cause related to use of the IRS TIN Matching and/or SSA's SSN

verification systems. If the system identifies a name/SSN mismatch,

a. Would an error message invalidate the reasonable cause treatment of an employer's receipt and maintenance of a valid, signed Form W-4?

b. Is the employer required to take defined corrective action, such as notifying the employee and directing them to contact the SSA, or to furnish proof of their name and SSN?

c. Will an error message invalidate withholding elections made on Form W-4?

Response: See earlier discussion. The IRS TIN Matching program is not available with respect to wage payments to employees. Responses under SSA's EVS system are not considered IRS notices and therefore do not enter directly into the determination of reasonable cause for waiving penalties under the section 6724 regulations. Even after learning of an EVS mismatch, the employer may still rely on the employee's Form W-4 and is not required to resolicit the employee's SSN. However, the employer is free to discuss the discrepancy reported under EVS with the employee and ask for corrected information, which could then be used on Form W-2.

4. a. We understand that the IRS TIN Matching system will match on four positions of the last name, while the SSA's SSN verification system will match on seven positions of the last name. This raises the possibility that names and SSNs that were verified by the IRS TIN Matching system could nevertheless be rejected by the SSA's W-2 processing programs.

b. Similarly, the IRS TIN Matching system may determine that a person's last name and Individual Taxpayer Identification Number (ITIN) matches the IRS TIN database. However, the SSA would reject an ITIN reported on Form W-2, and a penalty would presumably apply. IRS guidance should address these issues, and at a minimum, recommend that employers use SSA's SSN verification system for employee names and SSNs.

Response: As noted above, the IRS TIN Matching system is not available for employers to verify the SSNs of employees, and the IRS does not require the use of the EVS system. IRS penalty notices relating to mismatched TINs are issued based on IRS systems, not SSA systems. As you state, a mismatch determined by SSA will not necessarily result in an IRS penalty notice, because the IRS database includes ITINs. Further, the IRS system can correct and "perfect" a name/TIN mismatch reported under EVS. Therefore, only IRS notices trigger penalties and annual solicitation requirements. However, EVS is a useful tool for employers and may alert them to potential penalty situations, thereby providing an opportunity for correction prior to filing information returns.

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5. If an employer uses the system for some payee/employees, must they use it consistently for all similarly situated payees and employees?

Response: Assuming this question refers to use of EVS, federal tax regulations do not require use of EVS with respect to any employees. IRS TIN Matching is not available as discussed above.

6. What documentation of an employer's TIN Matching and/or SSN Verification system submissions and responses is necessary for reasonable cause purposes?

a. Will the IRS TIN Matching and/or SSN Verification systems generate permanent records of TIN Matching or SSN Verification submissions and results that would satisfy the reasonable cause guidelines?

b. Optimally, the TIN Matching and/or SSN Verification systems should maintain those records, rather than providing something that an employer would need to maintain.

Response: TIN Matching is not available as discussed above. Verification under EVS is not required for establishing reasonable cause, and the results of such verification would not supersede the requirements set forth in § 301.6724-1 of the regulations. That regulation requires the employer to solicit the employee's SSN, to rely in good faith on the number provided by the employee, and to use that number on Form W-2 until the IRS notifies the employer that the SSN is incorrect.

7. Can employers pass any W-2 accuracy penalties along to employee if they reported the employee's name and SSN as presented by the employee on Form W-4?

Response: If the employer files a Form W-2 using the SSN provided by the employee in response to an initial solicitation or an annual solicitation as discussed in the section 6724 regulations, the employer will meet the reasonable cause criteria and therefore will not be liable for a penalty.

8. We continue to recommend that employers should be given the authority to withhold federal income taxes at the highest rate (i.e., 'Single', with no allowances), or even higher, for employees who do not cooperate in providing their correct name and SSN. IRPAC recommended this many years ago, and we believe it must be part of the solution if W-2 accuracy is ever to improve.

Response: The IRS appreciates all suggestions for improving the completeness and accuracy of information reporting. Section 3402(f)(2)(A) of the Code provides that an employee must provide a signed Form W-4 on commencement of employment, stating the number of withholding exemptions which he claims. The regulations further provide

that if the employee fails to furnish a Form W-4 containing his marital status and number of withholding exemptions, then the employee shall be considered a single person claiming no withholding exemptions. See § 31.3402(f)(2)-1(a). However, the regulations do not impose single/zero withholding if the SSN reported on an otherwise complete Form W-4 eventually proves to be incorrect. The Service will consider your recommendations. However, any new guidance on withholding will need to be reconciled with the penalty rules discussed above.

9. Historically, some W-2Cs that are submitted by employers have not been processed in time to prevent CAWR notices. This area will need to be addressed to ensure that as many corrections as possible are processed in time to prevent proposed accuracy-related penalties.

Response: The need for timely processing of Forms W-2C will be considered as part of the program. Note that information reporting penalty notices are generally not issued until approximately 1½ years following the filing of the information returns.

10. Notices 972CG for Forms W-2 must be separate from Notices 972CG for other information returns, and should clearly indicate that they relate to Forms W-2. Organizations that have been subject to Notices 972CG, 'B-notices' and so on have well-established systems that handle such notices in the context of 1099-series reporting. Conversely, many payroll administrators have never seen such notices and are likely to forward them to their accounts payable department. The IRS should anticipate and address the significant confusion that is likely.

Response: The Service will take this recommendation into account in administering any penalty notices that may be issued with respect to TIN mismatches on Forms W-2. The Service will also consider how best to administer the program to prevent assessing penalties in excess of the maximum annual limitations on penalties.

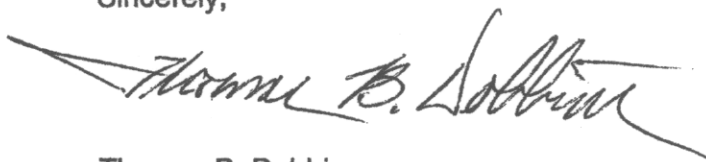
11. IRS guidance should explain the significance of SSN Verification and TIN Matching system responses to the employer's compliance with Immigration and Naturalization Service (INS) rules. For example, INS representatives have said that an error message from any SSN Verification or TIN Matching system would constitute constructive notice of a possible work authorization issue, which triggers certain compliance requirements on the part of the employer.

Response: Compliance with federal immigration laws and regulations is within the jurisdiction of the Bureau of Citizenship and Immigration Services (BCIS) within the Department of Homeland Security. As noted above, the TIN Matching system is not

available with respect to wage payments made to employees. You would need to contact BCIS and SSA for advice on the significance of an error message from the SSA system for purposes of the immigration laws and regulations.

We hope that these responses are helpful. If you have any further questions, please call Mary Gorman at (202) 283-0431 or Nancy Rose at (202) 622-4910.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Dobbins". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Thomas B. Dobbins
Director, Partnership Outreach
Taxpayer Education and Communication



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 17, 2003

Michael O'Neill
Chair, IRPAC
1111 Constitution Avenue, N.W.
Room 7571
Washington, D.C. 20224

Dear Mr. O'Neill:

Reference: Guidance Recommendation

Recently, you submitted to our office recommendations for the issuance of guidance by the Internal Revenue Service allowing for the electronic transmission of Forms W-8 and W-9 by foreign intermediaries and the publication of a separate Form W-4, Employee's Withholding Allowance Certificate, for use by nonresident alien employees. As contemplated by Notice 2003-26, these recommendations will be reviewed for inclusion in the 2003-2004 Guidance Priority List or one of its quarterly updates. This letter is an acknowledgment that the office of the Associate Chief Counsel (International) has received your recommendations.

Thank you for your efforts in helping us to identify those guidance items that are most important to taxpayers and tax administration.

Sincerely,

A handwritten signature in cursive script that reads "Valerie Mark Lippe".

Valerie Mark Lippe
Senior Technical Reviewer, Branch 2
Office of Associate Chief Counsel
(International)

cc: Kelly Myers Kogan
Special Counsel, ACC(I)

Information Reporting Program Advisory Committee (IRPAC)

Comments to the

IRS Oversight Board

**The Future Direction of Electronic Tax Administration
(Panel 1)**

January 27, 2003

**Michael O'Neill
IRPAC Chair**

On behalf of IRPAC, I thank the Chair and the members of the IRS Oversight Board for the opportunity to participate on this panel.

The Information Reporting Program Advisory Committee (“IRPAC” or “Committee”) was established in 1991 in response to an administrative recommendation contained in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. At that time, Congress recommended that the Internal Revenue Service (“IRS”) consider the creation of an advisory group comprised of representatives from the payer community and practitioners to discuss improvements to the information reporting program. Since its inception, IRPAC has worked closely with IRS officials to provide recommendations on a broad range of issues intended to enhance the reporting program and achieve fairness to taxpayers.

During the past two years that I have served on IRPAC, the Committee has made a number of recommendations to the IRS related to the electronic processing of information returns and forms. The following are a few examples:

- Electronic Filing of Forms 990 – The IRS should maintain its current plans to implement electronic filing systems for Forms 990 and 990-EZ by January 2004, for fiscal year 2003. Electronic filing for Forms 990-T and 990-PT should be made available the following year. In addition, the Forms 990 and attachments should be simplified to make electronic filing more efficient and improve compliance by filers.

Electronic filing will also ensure quicker and more accurate publishing of exempt organization returns, which will assist donors in their decision making.

- Electronic Delivery of Payee Statements – The Electronic Payee Statements temporary regulations should be modified to include Forms 1099-R and 5498, which were omitted from the list of Forms W-2, 1098, and 1099 that may be furnished to payees electronically.
- TIN Matching Program – The Taxpayer Identification Number (“TIN”) Matching Program should be made available to employers to verify employee name and Social Security Number combinations. The Program should also be expanded to permit payers to verify name and TIN combinations reportable on Forms 1099-R and 5498.
- Questionable W-4 Program – The IRS should permit employers to report questionable Forms W-4 directly to the appropriate Service Center by e-mail or fax submission, in addition to the magnetic and electronic reporting alternatives now available. An easy submission method would help reduce the cycle time for processing questionable W-4 cases and improve employee compliance.

In the process of developing its recommendations, IRPAC has identified several factors that limit the growth of the electronic tax administration program. Thus far, the Committee has addressed these factors in a somewhat ad hoc manner as it has examined specific information reporting issues. Because a more systematic approach would benefit

all users of the electronic program, IRPAC offers the following recommendations for expanding its use:

Elimination of Regulatory Impediments to Electronic Processing

The IRS recently completed a review of the Income Tax Regulations designed to eliminate regulatory impediments to electronic filing of the Form 1040, in accordance with the IRS Restructuring and Reform Act of 1998. This review resulted in the issuance of temporary regulations eliminating a number of regulatory provisions that impede electronic filing. The IRS should initiate a similar review process with respect to other major returns and forms filed by business and nonprofit organizations.

Revision of Forms, Publications, and Instructions to Facilitate Electronic Processing

Many of the paper forms and returns do not lend themselves to electronic processing or matching. The IRS should examine each form series in order to facilitate the electronic processing of information reported on the forms *and* their attachments. For example, standardization of the substitute Forms K-1 would enhance the ability of the IRS to electronically match these forms with the Forms 1040. The IRS also needs to update its publications and instructions so that they incorporate the latest changes in electronic filing.

Improve the Electronic Tools Available to Tax Practitioners

For electronic tax administration to be embraced by the tax professional community, it must offer real and tangible benefits to practitioners. Such benefits could include the ability of practitioners, who have been authorized by a valid power of attorney, to review on-line a taxpayer's transcript or record of accounts, to review estimated tax payments made by a taxpayer during the year, and to review the status of any refunds due a taxpayer. Practitioners also would benefit by being able to use e-mail to communicate with the IRS in response to CP2000 notices issued to their clients. In addition, the IRS should utilize its Nationwide Tax Forums, which are heavily attended by practitioners, to offer workshops and "hands-on" demonstrations on the available features and benefits of the electronic program.

IRPAC believes that the IRS is aware of these issues and is committed to the improvement of its electronic tax administration initiatives. Forums such as today's hearing, which include IRS advisory committee representatives and other external stakeholders, should lead to a more coordinated approach in the elimination of barriers that stifle the growth of the electronic program.

Thank You.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7571, Washington, DC 20224

Michael O'Neill
Chair

June 9, 2003

Connie Davis
Vice Chair

Nancy Killefer
Chair

**Large & Mid-Size
Business
Sub-Committee:**
Neal S. Givner, Chair
Joan DiBlasi
Carol Kassem
Ernest Molinari

IRS Oversight Board
1500 Pennsylvania Avenue
Washington, DC 20220

Re: Extension of Filing Due Date for E-Filers

**Tax Exempt/
Government Entity
Sub-Committee:**
Barbara Seymon-Hirsch,
Chair
Pamela Everhart
Linda Lampkin

Dear Ms. Killefer:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I am writing in response to your request for additional information regarding the extension of the filing due date for taxpayers who file their returns electronically.

**Small Business/
Self-Employed
Sub-Committee:**
Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

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

**Wage & Investment
Sub-Committee:**
Connie Davis, Chair
Dorothy Atchison
Karen Carter

Last summer, IRPAC and the IRS Advisory Council ("IRSAC") conducted a series of practitioner focus groups at the IRS Nationwide Tax Forums held in Atlanta, Atlantic City, New Orleans, and Reno. One of the questions addressed during the focus groups was the extension of the due date to April 30 for electronic filers. The responses we received did not indicate that there is a consensus on this question among tax practitioners. Some participants indicated that extending the due date would simply extend the tax season, at least for e-filed returns. Others felt that a two-week extension would not be a sufficient incentive to convince many taxpayers to file electronically, especially for taxpayers who are resistant to technological change. On the other hand, several participants felt that an extension would be a strong incentive to e-file for balance due taxpayers if they also have an extension to pay their tax liability.

As you know, legislation introduced in the House of Representatives (H.R. 1528) would establish a 15-day delay in the due date for electronically filed individual income tax returns. The balance due (if any) on such returns also would not be due for 15 additional days if paid electronically.

Nancy Killefer
June 9, 2003
Page 2

In general, IRPAC supports the extension of the due date as a means of encouraging more taxpayers to become e-filers. However, we are concerned about the impact such a change might have on state taxing agencies. Many states are facing severe revenue shortfalls and would be unwilling to conform to the extended due date for electronic filers. The existence of different state and federal due dates would add complexity to the filing process and may have other unintended consequences for states. For this reason, we recommend that the IRS consult with the states as part of any proposal to extend the filing due date for electronic filers.

Please call me at (510) 987-0905 if you have any questions concerning these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Neill", followed by a horizontal line.

Michael O'Neill
Chair, IRPAC

Attachments

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

Handwritten initials

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

1111 Constitution Avenue, NW, Room 7557, Washington, DC 20224

Michael O'Neill
Chair

Connie Davis
Vice Chair

**Large & Mid-Size
Business**

Sub-Committee:
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Carol Kassem
Ernest Molinari

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Ronald Moonin, Chair
Jeffrey Adelstone
Carole Conklin
Beanna Whitlock

Wage & Investment
Sub-Committee:
Connie Davis, Chair
Dorothy Atchison
Karen Carter

May 1, 2003

Mr. Curt Wilson
Assistant Chief Counsel
Procedure and Administration
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: IRPAC Recommendations for Guidance Priority List

Dear Mr. Wilson:

In response to Notice 2003-26, I am writing to recommend that the items summarized below be included on the Guidance Priority List for 2003-04.

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

IRPAC recommends that the following items be considered for publication on the Guidance Priority List (an IRPAC letter or briefing paper previously submitted to the IRS is included as an attachment for each item):

1. Shared Access to Forms W-8 and W-9 for Related Entities

The IRS should issue guidance to permit related payers to share Forms W-8 and W-9 by a means other than a coordinated account information system. Similarly, general partners of non-public partnerships should be permitted to rely on a single Form W-8 or W-9 for the same partner in related partnerships (see Attachment 1).

2. Electronic Transmission of Forms W-8 and W-9 by Foreign Intermediaries

The IRS should publish regulations or a revenue procedure that set forth the requirements for a nonqualified intermediary (NQI) to electronically transmit Forms W-8 or W-9 on behalf of beneficial owners and associate those forms with a Form W-8IMY provided by the NQI. The guidance should also make clear whether the beneficial owner must provide express or only implicit consent for an NQI to electronically transmit the form (see Attachment 2).

3. Form 1099 CAP-Reporting

The IRS should develop an on-line or hard copy publication that acts as a central repository of information necessary for brokers to effectuate the Form 1099-CAP reporting requirements. The IRS should also issue guidance allowing brokers the option to use the Form 1099-B as an alternative to the Form 1099-CAP to report transactions subject to 1099-CAP reporting. In addition, the IRS should revise Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G (and 1042-S), to permit brokers to include Form 1099-CAP information on a consolidated substitute Form 1099 customer statement (see Attachment 3).

4. Withholding Taxes on Credit Default Swaps

The IRS should publish guidance confirming that payments made to a non-U.S. counterparty pursuant to a credit default swap are exempt from withholding under Internal Revenue Code section 1441 or 1442. IRPAC believes that such exemption is consistent with the rationale underlying Treasury Regulation section 1.1441-4(a)(3) as articulated in the preamble to the final U.S. nonresident alien withholding tax regulations, which were issued in October 1997 (TD 8734) (see attachment 4).

5. Schedule K-1 Enhancements

The IRS should publish revised revenue procedures establishing more stringent criteria for substitute Schedules K-1 provided to taxpayers. The IRS should also revise Schedules D and E of the Form 1040 in order to facilitate the matching of K-1 information to the Form 1040. In addition, Publication 17, Your Federal Income Tax Return, and Publication 925, Passive Activity and At-Risk Rules, should be revised to include guidance to taxpayers affected by "non-matching" Schedule K-1 returns (see attachment 5).

6. LLC Election and Tax Classification

The IRS should revise Schedules C, E, and F (Form 1040) and Forms 1120, 1120S, and 1065 to include a checkbox and date for use by Limited Liability Companies ("LLCs"). This checkbox would be used to alert the IRS that the filing of a specific tax form by an LLC reflects the tax classification and date of the tax classification election rather than the legal

Mr. Curt Wilson
May 1, 2003
Page 3

status of the LLC entity (see attachment 6). Schedules C, E, and F (Form 1040) and Forms 1120 and 1120S also need to be revised to include the question "Is this a Limited Liability Company?" In addition, Form 940 and 941 should be revised for purposes of establishing whether the LLC is a single member LLC and to identify the name of the single member and his or her employer identification number. The IRS also should publish guidance clarifying the responsibility of LLCs to pay self-employment taxes (see attachment 7).

7. Form W-4NR for Nonresident Aliens

The IRS should publish a separate Form W-4NR and instructions for use by nonresident aliens. The form and instructions should address the unique and complex withholding rules applicable to non-citizens temporarily working in the U.S. (see Attachment 8).

Please call me at (510) 987-0905 if you have any questions concerning these recommendations.

Sincerely,



Michael O'Neill
Chair, IRPAC

Attachments

Cc: Robin Marusin, Chief, Liaison and Tax Forum Branch

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**REPORT TO THE COMMISSIONER
MEMBER BIOGRAPHIES**

**JEFFREY A. ADELSTONE
DOROTHY T. ATCHISON
KAREN CARTER
CAROLE R. CONKLIN
CONNIE L. DAVIS
PAMELA D. EVERHART
NEAL S. GIVNER
CAROL A. KASSEM
LINDA M. LAMPKIN
ERNEST V. MOLINARI
RONALD C. MOONIN
MICHAEL T. O'NEILL
BARBARA SEYMON-HIRSCH**

OCTOBER 23, 2003

Information Reporting Program Advisory Committee Biographies

Jeffrey A. Adelstone Jeffrey Adelstone is President and CEO of Adelstone Financial Services, Inc. – a financial services firm specializing in income tax preparation, financial planning, management advisory services for small business, and accounting. Established in 1969 (including predecessor companies), Mr. Adelstone routinely prepares in excess of 1000 income tax returns annually, and over his long career, has prepared well in excess of 30,000 returns. Mr. Adelstone has served in the capacity of President of both the Arizona Society of Practicing Accountants (an affiliate of the National Society of Accountants) and the Arizona Society of Enrolled Agents. He is the only individual to have served on the national boards of both The National Association of enrolled Agents and the National Society of Accountants. Mr. Adelstone holds a BS from the University of Arizona (1969). **(SB/SE Subgroup)**

Dorothy T. Atchison For the past thirty years, Dorothy Atchison has been a tax preparer. Ms. Atchison opened her own business in 1985 and is currently Owner of Atchison Business Center in Jackson, Alabama where she prepares tax returns for individuals whose annual incomes range from the poverty level to over \$150,000. Dorothy also prepares tax returns and other required reporting documents for small corporations (C & S), partnerships, LLCs, tax-exempt entities and estates, representing numerous taxpayers, both individuals and corporations, with audits and other situations. A member of the National Association of Tax Professionals and the National Association of Enrolled Agents, having served on the Boards of Directors for the Alabama Chapters of both organizations, Dorothy is currently the President of Alabama's National Association of Tax Preparers **(W&I Subgroup)**.

Karen Carter Active in the payroll profession for more than seventeen years, Karen Carter is employed by the Oracle Corporation as a National Solutions Specialist. In this role, Ms. Carter works with clients to identify business process needs - and solutions for those needs - in the area of payroll management. Before coming to Oracle, Ms. Carter was employed in the direct oversight of payroll accounting for corporations, engaged in activities such as, but not limited to, due diligence with respect to employment tax structures in the area of mergers and acquisitions. Ms. Carter is a member of, and has held several positions within, the American

Payroll Association ("APA") on the national, state, and local levels, and was the chair of the APA's Government Affairs Task Force on the Electronic Federal Payment System. Since 1995, Karen has been a member of the Board of Advisors for the *Payroll Administration Guide and Payroll Library on CD*, one of the nation's leading payroll guides, published by the Bureau of National Affairs. **(W&I Subgroup)**

Carole R. Conklin

Currently the Tax Consultant and Small Business Accountant for her own company, Accounting by Conklin, Carole Conklin began her tax career as a preparer with H&R Block in 1982. Ms. Conklin's small business accounting and tax consulting firm has over 200 clients with very diverse sets of tax needs, a significant number of which are corporations and partnerships with complex consulting needs. Ms. Conklin prepares returns for all her clients and provides tax planning services and representation before the IRS. Carole prides herself on customer service as the hallmark of her practice. Prior to start-up of her own business, Ms. Conklin worked in a variety of customer service environments, in all roles placing a premium on customer service. Carole holds a BS in Marketing with an Accounting minor from Indiana University (1968). **(SB/SE Subgroup)**

Connie L. Davis

Ms. Davis joined Federal Liaison Services in 1994, currently serving as Vice President of Human Resources. With more than twenty years experience in payroll and payroll tax processing, Ms. Davis currently serves as a Director of the American Society for Payroll Management and holds positions on the Child Support and Government Relations Committees. Ms. Davis is a former President and Education Director of the Dallas Chapter of the American Payroll Association, and has served on the APA's By-Laws Revision Committee, as well as the Nominating and Elections Committee. Formerly a member of the Commerce Clearing House Payroll Management Guide Advisory Board, Ms. Davis has been an advisor and technical editor to Payroll Practitioner's Monthly, Principles of Payroll Administration, and Payroll Practitioner's Compliance Handbook. An instructor of various local payroll classes and seminars, Ms. Davis qualified as a Certified Payroll Professional in 1985. **(W&I Subgroup Chair)**

Pamela D. Everhart

An Associate General Counsel for Fidelity Investments, Ms. Everhart is responsible for advising Fidelity's retail retirement business unit regarding compliance with information and tax reporting laws. In this role, Ms. Everhart provides research and analysis of various federal and state income tax reporting and withholding issues arising from Fidelity's management of retail

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retirement assets, including traditional, Roth, SEP and Simple IRAs, and Keogh plans. While Ms. Everhart's information reporting expertise is in the retirement area, Ms. Everhart works in a centralized legal department at Fidelity that includes lawyers who represent the non-retirement areas on tax reporting issues of the company as well. Ms. Everhart also advises Fidelity on the development and enhancement of various tax-related tools, although most recently, she has been involved in analyzing tax information reporting change that may be required as a result of the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001. **(TE/GE Subgroup)**

Neal S. Givner

For over twelve years, Mr. Givner has worked as a tax attorney in the financial services industry, specializing in tax withholding and information reporting. Prior to joining Credit Suisse First Boston as Vice President of Global Tax Withholding and Reporting, Mr. Givner was the Vice President of Tax Withholding and Information Reporting at The Bank of New York for over seven years. While with The Bank of New York, Mr. Givner served as Chairperson of the Subcommittee on Tax Withholding and Information Reporting for the New York Clearing House. Mr. Givner also served as Associate Tax Counsel at Salomon Brothers, Inc. from 1989 to 1992. Having completed undergraduate studies at Brooklyn College in Brooklyn, New York, Mr. Givner received a JD from Georgetown University and a Master of Laws in Taxation from George Washington University. Mr. Givner is a member of the District of Columbia Bar Association. **(LMSB Subgroup Chair)**

Carol A. Kassem

Carol Kassem is Vice President and Information Reporting Manager of Bank One Corporation in Baton Rouge, Louisiana. Ms. Kassem is responsible for the overall coordination of the Information Reporting process for all affiliates and subsidiaries of Bank One Corporation including the issuance of year-end information returns to customers and submission of this information to the IRS. Ms. Kassem provides updates and guidance to all areas of the organization in a timely manner pertinent to changes in IRS Regulations and reporting requirements. Ms. Kassem is a member of the American Bankers Association ("ABA"), and holds a BS in Accounting from Louisiana State University (1978). **(LMSB Subgroup)**

Linda M. Lampkin

Linda Lampkin serves as the Program Director for the National Center for Charitable Statistics at the Urban Institute, a program of the Center on Nonprofits and Philanthropy. Ms. Lampkin works closely with the IRS, key nonprofit groups, and the

scholarly community to maximize utilization of nonprofit data and to promote and conduct research on the sector. The National Center for Charitable Statistics serves as the national repository of nonprofit information and plays a critical role through its collaborations with the IRS and state officials to improve the quality and accessibility of Form 990 data on nonprofits, which it holds and disseminates. The National Center for Charitable Statistics also collects and maintains data from other sources which it makes available to the public. Ms. Lampkin is the author of many articles on IRS Form 990 data quality and on the classification of nonprofit organizations. Ms. Lampkin co-authored *State Nonprofit Almanac 1997: Profiles of Charitable Organizations* and its update, the *Nonprofit Almanac 2001* with INDEPENDENT SECTOR, which was released in February 2002. Ms. Lampkin is a member of the President's Committee on Employment of People with Disabilities. Ms. Lampkin holds an MS in Labor Economics and Statistics (1970) and a BS in Economics from Cornell University (1968). **(TE/GE Subgroup)**

Ernest V. Molinari

Ernest Molinari is Vice President and Corporate Counsel for Prudential Insurance Company, Newark, New Jersey. Mr. Molinari is the lead attorney responsible for providing legal support to Prudential Insurance and Prudential Securities' relating to tax information reporting and withholding issues, that include fringe benefits, payroll, and employment tax issues. Mr. Molinari presently serves on the Withholding and Information Reporting Committee and the Independent Contractor/Employee Group of the American Council of Life Insurance ("ACLI"), and has actively participated in a number of ACLI Committees, Task Forces, and Working Groups addressing product taxation, reporting and withholding issues. Mr. Molinari holds a JD from Brooklyn Law School and a BS in Accounting from New York University. **(LMSB Subgroup)**

Ronald C. Moonin

Mr. Moonin is President of Gushem & Moonin, a Certified Public Accounting and Consultant Firm. Mr. Moonin's accounting experience includes management accounting, accounting firm management, tax and audit services and forensic accounting. Mr. Moonin specializes in corporate and individual taxes, bankruptcy, financial planning and forensic accounting. He has negotiated and prepared financial situations the Pension Benefit Guaranty Corporation for companies operating under Chapter 11. Mr. Moonin's extensive bankruptcy experience involves the review of preferential payments, preparation of tax returns and complex corporations and personal tax planning. Mr.

Moonin is a member of the American Arbitration Association and the American Institute of Certified Public Accountants. Mr. Moonin holds a BS in Finance from the University of Illinois (1969). **(SB/SE Subgroup)**

Michael T. O'Neill

Mike O'Neill is the Manager of the Payroll and Tax Services unit of the University of California, Office of the President. Mr. O'Neill's unit is responsible for preparing enhancements to the payroll system and establishing University-wide payroll policies and procedures. The unit also prepares the University's unrelated business income tax return and coordinates policy development in many tax areas. In addition, the unit publishes the University's Accounting Manual and Business and Finance Bulletins. Mr. O'Neill has more than twenty years experience with the University in the financial and tax management functions, and is a member of the National Association of College and University Business Officers Taxation Council and founder of the Tax Issues Consortium. Mr. O'Neill has a BS in Political Science and an MBA from Santa Clara University. **(IRPAC Chair & member, W&I Subgroup)**

Barbara Seymon-Hirsch

Ms. Seymon-Hirsch is a partner in the law firm of Davis & Harman LLP, specializing in federal tax matters, concentrating particularly on issues relating to insurance product tax compliance, qualified retirement plans, section 403(b) arrangements, and employment tax. Ms. Seymon-Hirsch is a member of the District of Columbia and New York State bars and a member of the Committee on Employee Benefits, Tax Section, of the American Bar Association. Ms. Seymon-Hirsch received a BA from Vassar College in 1974, a JD from California Western School of Law in 1977, and an LLM in Taxation from Georgetown University Law Center in 1978. **(TE/GE Subgroup Chair)**