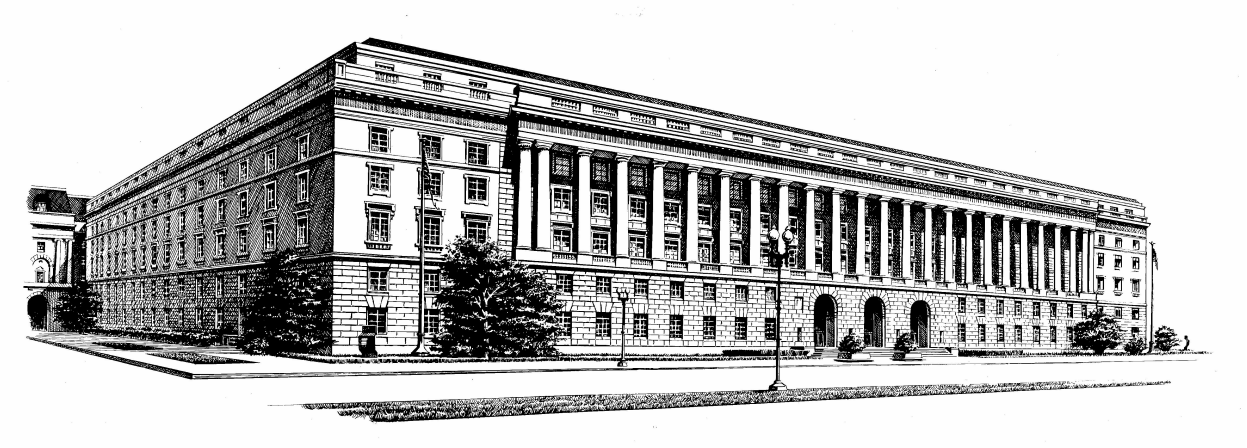

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE PUBLIC MEETING

OCTOBER 27, 2005
1111 CONSTITUTION AVENUE NW
WASHINGTON, DC

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

PUBLIC MEETING BRIEFING BOOK

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INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)
2005 PUBLIC MEETING
1111 CONSTITUTION AVENUE – RM. 3313
THURSDAY, OCTOBER 27, 2005
AGENDA

Time	Topic	Presenters
8:30-9:00	Coffee/Refreshments	
9:00 – 9:15	General Remarks	Jeffrey Adelstone, Chairman Paul Mamo, Acting Director, NPL Frank Keith, Chief Communication & Liaison
9:15 – 9:45	Opening Remarks	Mark W. Everson Commissioner of Internal Revenue
9:45– 10:30	IRPAC Overview Report	Jeffrey Adelstone, Chair, IRPAC Subgroup Chairs
10:30 – 10:45	Break	
10:45 - 11:15	Large & Midsize Business Subgroup Report	Debra Heikkinen, Chair, LMSB Subgroup Bruce Ungar, Deputy Commissioner, LMSB Keith Jones, Director Field Specialists
11:15 – 11:45	Wage & Investment Subgroup Report	Patricia Rhodes, Chair, W&I Subgroup Richard J. Morgante, Commissioner, W&I Denise Fayne, Director, Media & Publications
11:45 – 12:15	Tax Exempt & Government Entities	Patricia McCauley, Chair, TEGE Subgroup Steve Miller, Commissioner, TEGE Mark O'Donnell, Program Manager
12:15 – 12:45	Small Business & Self Employed	Martha Bell, Chair, SBSE Subgroup Kevin Brown, Commissioner, SBSE
12:45 – 1:00	Electronic Tax Administration	Bert DuMars, Director, ETA

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

GENERAL REPORT

JEFFREY A. ADELSTONE
MARTHA BELL
DAVID A. CORTHELL
MARIANNE COUCH
CHARLES F. EGENDER
BARRY C. FAISON
ROBERT J. FOLEY
DEBRA L. HEIKKINEN
PAUL HELLER
VIRGIL A. JULIAN
KATHERINE S. KINNICUTT
PATRICIA A. MCCAULEY
STEVEN A. NEISS
RACHEL J. PALIOTTI
PATRICIA A. RHODES
REGINA TARPLEY
JANICE M. WEGESIN

OCTOBER 27, 2005

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

GENERAL REPORT

The Information Reporting Program Advisory Committee (IRPAC) was established in 1991 in response to an administrative recommendation 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 of representatives from the payer community and practitioners interested in the information reporting program to discuss improvements to the system."

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." Since its inception, 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.

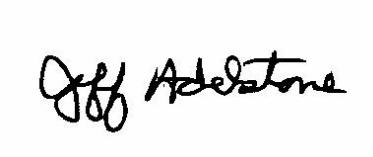
In preparation for its public meeting on October 27, 2005, the IRPAC met four times at the IRS headquarters building in Washington, DC. IRPAC issues addressed encompassed areas of interest submitted for consideration by all four primary IRS groups – Tax Exempt/Government Entities, Wage & Investment, Large & Medium Sized Businesses, and Small Business/Self-Employed. The issues themselves covered a wide array of topics and improvements. Details on any specific issue can be obtained by the reader by reviewing the individual write-up on the issue of interest, which is contained as part of this report.

In May 2005, the IRPAC Chairman participated in the public meeting of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC is making tremendous strides in the electronic filing area, and that meeting was both very informative as well as enlightening. The IRPAC will continue to both monitor and work with the ETAAC on common issues of interest.

As the current year comes to a close, the IRPAC has completed it's fifth year under the direction of the Office of the National Public Liaison – which has the 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 and support it has received from the NPL staff throughout the entire year in support of the committee's work agenda. Their contributions to the process has been nothing short of spectacular, and our special thanks go out to Paul Mamo – Acting Director of NPL and to Caryl Grant and their respective staffs for the tremendous jobs they have done on behalf of the IRPAC.

Most importantly, I wish to extend my personal thanks to each and every member of the IRPAC. Both singularly and jointly, this group have given their all! Committing untold tireless hours to their assigned tasks, most of these members do so out of a "labor of love" and without their enthusiasm, our accomplishments would be significantly diminished.

Respectfully submitted,



Jeff Adelstone, Chairman
IRPAC

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

LARGE & MIDSIZE BUSINESS SUBGROUP REPORT

DAVID A. CORTHELL
ROBERT J. FOLEY
PAUL HELLER
STEVEN A. NEISS
DEBRA L. HEIKKINEN, SUBGROUP CHAIR

OCTOBER 27, 2005

INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE

LARGE & MIDSIZE BUSINESS
SUBGROUP REPORT

1. Electronic Tax Administration

During 2005 the Large & Mid-Size Business ("LMSB") Subgroup focused on Electronic Tax Administration within the IRS:

- In April 2005, the LMSB Subgroup visited the Philadelphia Service Center. This visit impressed upon the Subgroup the significant need for further development of electronic processes within the IRS.

- The Subgroup met with Felicia Davenport, Tax Analyst, Philadelphia; Doug Peterson, IT Specialist, Business Modernization; Quyen Huyuh, Attorney, International Chief Counsel; Carl Cooper, Senior Counsel, International Chief Counsel; and, Paul Devlin, Mitre Corporation, to discuss electronically receiving and transferring Form 6166, Certificate of Residency. IRPAC supports the continued development of this project, as well as the other recommendations discussed in number 4 below.

- The LMSB Subgroup met and held a follow-up conference call with Bert DuMars, Director of Electronic Tax Administration, regarding the conceptual analysis of a "Clearing House" for information reporting. IRPAC supports the development of this information reporting Clearing House.

- IRPAC again recommends expanding access to the Transcript Delivery System to payers and withholding agents who are not currently eligible to participate in the *e-Service* program but electronically file information returns, sometimes in the millions, and utilize the TIN Matching Program. This recommendation serves as a follow up to the 2004 paper, "*Expansion of e-Services Program Transcript Delivery System"*.

- IRPAC also recommends that the IRS expand *e-Services* to permit payers to receive electronically IRS' payee underreporting notifications (C-Notices), CP2100/CP2100A Notice of Backup Withholding due to invalid name and TIN combinations (B-Notices), and information return penalty notices (972CG). (Paper by Steve Neiss)

- Finally, in August 2005, IRPAC forwarded correspondence to Bert DuMars detailing the activities of the LMSB Subgroup during 2005 and IRPAC's recommendations for Electronic Tax Administration. (Letter by David Corthell)

2. **Qualified Foreign Dividends** (Letter by Steve Neiss)

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "2003 Act") generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" is subject to tax at the reduced rates applicable to certain capital gains. Notice 2004-71 provides guidance for persons required to make returns and provide statements under section 6042 regarding distributions with respect to securities issued by foreign corporations and for individuals receiving such statements. The notice extended the 2003 simplified procedure as contained in Notice 2003-79 for tax year 2004 information reporting of foreign distributions to US persons. On April 4, 2005, IRPAC submitted a letter in response to Notice 2004-71 recommending that the IRS extend the simplified procedures for at least another year. The April 4th letter is a follow-up to our September 8, 2004 letter, "Foreign Issuer Qualified Dividend Certification".

3. **Exemption of Interest Related Dividends, Short-term Capital Gain Distributions and Other Payments to Foreign Investors** (Letter by Steve Neiss)

Under the American Jobs Creation Act of 2004, certain interest related dividends and capital gain distributions paid to foreign investors are exempt from US withholding tax. The exemption does not apply to a dividend paid to any person in a foreign country with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of US income tax by US persons. Other exceptions relate to Real Estate Investment Trust's capital gain distributions and Puerto Rico corporations' withholding. In April 2005 IRPAC submitted a letter in response to IRS Notice 2005-25 requesting that these foreign issues be included on the 2005-2006 Guidance Priority List. IRPAC also recommended that the IRS provide a list of foreign countries that exchange of information is adequate for regulated investment companies to exempt interest related dividends from US withholding taxes to foreign investors and provide guidance relating to other foreign withholding provisions as detailed in the American Jobs Creation Act.

4. **Form 6166 Foreign Certification Requests** (Paper by Robert Foley and Steve Neiss)

In January 2004 the IRS implemented a new procedure for requesting a certificate of residency (Form 6166) and designed Form 8802 to streamline the process. Due to the volume of requests and rejections for additional information, there has been a significant delay in the processing of Form 6166 which are needed to avoid double taxation on dividends or interest. Failure to provide this form on a timely basis results in over-withholding and the necessity to reclaim the taxes withheld from the foreign corporation or taxing authority. During the LMSB Subgroup's April 2005 visit to the Philadelphia Service Center, we met with staff and discussed Form 6166 processing procedures and work-arounds. IRPAC has recommended that the IRS end Form 6166 identification of the country of investment except where necessary; increase staffing at the Philadelphia Service Center Form 6166 team; and fund an electronic solution to Form 8802/6166 processing. We are very pleased that the September 2005 IRS revisions to Form 8802

and its instructions have ended most of the country-specific elements of Form 6166. IRPAC continues to encourage IRS adoption of our other recommendations.

5. **Information Reporting of Corporate Transactions (Mergers & Acquisitions)** (Letter by Steve Neiss)

   IRPAC submitted a comment letter on February 25, 2005 in response to the IRS's request for comments in IRS Notice 2005-7 on finalizing regulations under Section 6043A. The IRS revised its web page to list Forms 8806 by year of transaction.

6. **Information Reporting of Payments to Nonresident Aliens Substitute Payments in Cross-Border Securities Lending Transactions** (Paper by Paul Heller)

   Notice 97-66 provided guidance on the manner in which to handle withholding taxes in foreign to foreign substitute payments. However, no guidance was provided with respect to proper Form 1042-S reporting. In order to allow taxpayers to be confident and consistent in reporting of these transactions, IRPAC recommends in cases of no withholding, there should be no Form 1042-S reporting required. As an alternative to no reporting, as well as for those cases where some withholding is required, IRPAC recommends that there be a new Income Code and/or Exemption Code added to cover "Payments under Notice 97-66".

7. **Penalty Notices** (Debra Heikkinen, IRPAC Contact)

   During 2004 and 2005, the LMSB Subgroup held continuing discussions with Dawn Davis from SB/SE's Office of Penalty and Interest, about varying IRS responses and denials of industry's requests for penalty waiver and abatement. Taxpayers found that letters received from the IRS lacked an IRS contact and/or sufficient justification or explanation of the denial (denied extensions or reasonable cause). Taxpayers also found that the IRS refused to discuss penalty issues with the company's tax professional and insisted on speaking with a company official. IRPAC would like to thank Dawn Davis for responding to these concerns. She spoke to the LMSB Subgroup at each meeting, reviewed the training provided at several Service Centers, and modified how the Service Centers' staffs may respond to taxpayers. IRPAC is monitoring these changes and will provide industry comments to Ms. Davis after penalty notices in 2005 are received.

8. **Amended Forms 941/945** (Debra Heikkinen, IRPAC Contact)

   IRPAC submitted a letter for the 2004 Public Meeting concerning the procedures that employers and reporting/paying agents must follow in order to pay and/or report wage and tax adjustments for prior tax periods and previously filed Forms 941 or Forms 945. Generally such adjustments must be made in conjunction with the current period's return as explained with an attached Form 941c, *Supporting Statement to Correct Information*. This procedure has proven to be impractical for employers and payroll service providers. IRPAC recommended that the Service procedures (e.g., a regulation, revenue ruling, revenue procedure, notice and/or instructions to the forms) recognizing the use of "stand-alone" amended Forms 941 and 945 as an alternative available to all employers and their payroll service providers. The IRS Office of Taxpayer Burden Reduction recognizes the

payroll industry's concerns and has opened a project on this issue. IRPAC will monitor the progress of this project and assist the IRS on an as-needed basis.

9. **Stock Option Deposits/3-Day Rule** (Debra Heikkinen, IRPAC Contact)

IRPAC submitted a letter for the 2004 Public Meeting concerning the promulgation of rules of administrative convenience for the application of FICA, FUTA, and income tax withholding to wages resulting from the exercise, sale or arm's length disposition of nonstatutory stock options. At IRPAC's request, the IRS conducted field research to determine the extent of this issue. Based on the IRS response, IRPAC determined that the IRS's approach in the March 2003 Field Directive on the Assertion of the Penalty for Failure to Deposit Employment Taxes was reasonable. The IRS will not issue any further guidance on this issue. IRPAC will continue to monitor this issue.

EXECUTIVE SUMMARY

TITLE OF PAPER: Expansion of e-Services to permit payers to receive IRS' notified payee-underreporting notifications (C-Notice) electronically.

ISSUE STATEMENT: Payers and withholding agents currently receive C-Notices on paper. The use of technology through electronic transmissions can improve the Service's enforcement mission by speeding payer's processing and reducing their errors.

REMEDIES SOUGHT: Electronic transmissions should be available to payers who receive at least 250 C-Notices.

IRPAC TEAM: Debra Heikkinen, David Corthell, Robert Foley, Paul Heller and Steven Neiss

IRS PARTICIPANTS: JoAnn Bass, Keith Jones

BACKGROUND: The IRS issues C-Notices for payers to backup withhold when the IRS has determined that a payee has underreported dividends or interest and has not resolved the discrepancy with the IRS. Payers are required to identify all of the payee's accounts and forward letters notifying payees that they are subject to IRS mandated backup withholding. Upon resolution of the underreporting, the IRS notifies payers to stop withholding. IRS' notices to large financial institutions are in excess of 1000 payee records.

SUMMARY OF RECOMMENDATIONS: IRPAC recommends that the IRS provide electronically C-Notices in excess of 250 records. Alternatively, if the IRS cannot immediately provide C-Notices electronically, the IRS should consider providing this information on magnetic media tapes.

TAXPAYERS/INDUSTRIES AFFECTED: Taxpayers, Reporting Agents, Paying Agents,

BENEFITS TO TAXPAYERS: The use of IRS automation will reduce payers' manual intervention and increase their efficiency and accuracy.

BENEFITS TO INTERNAL REVENUE SERVICE: The use of automation will provide greater IRS efficiency and provide controls to ensure that the C-Notice program is being implemented timely and accurately.

DISCUSSION:

IRS regulations under section 6011(e)(2)(A) of Internal Revenue Code provide that any person, including a corporation, partnership, individual, estate and trust, who is required to file 250 or more information returns must file such returns electronically/magnetically. Withholding agents who meet the threshold of 250 or more Forms 1099 and Forms 1042-S are required to submit their information electronically or magnetically. When the IRS notifies the payer that the TIN furnished by the payee is incorrect (Sec. 3406(a) (1) (B)), the IRS provides a magnetic media file if there are 250 or more payees. This media file is provided by the Martinsburg Service Center to the payer. If there are less than 250 payees, the information is provided on paper. However, when the IRS notice to payers regarding backup withholding due to notified payee underreporting (Sec. 3406(a)(1)(C)) of 250 or more payees, the notice is provided on paper. Payers have recently received IRS correspondence with more than 500 and in some cases 1000's of payee records. This requires an account lookup including identification of other accounts with the same tax identification numbers and manual input. This is an undue burden on the financial community.

RECOMMENDATIONS:

1. IRPAC recommends that the IRS have a consistent procedure in requesting payers to notify payees that they are subject to backup withholding. The IRS' notification of payer "C-Notices" should be electronic rather than paper.
2. If electronic transmissions are not currently feasible then the IRS should notify payers by magnetic media tapes.
3. The computer format of the magnetic media should be consistent with the B-Notice backup magnetic media withholding notification to payers to withhold because the payee's tax identification number is incorrect.
4. The IRS should consider permitting payers to forward these notices electronically to payee as long as that is the customary method of communication with their client.
5. This automation will result in quicker, more accurate notifications to payees due to elimination of manual intervention.

This issue was previously proposed in an IRPAC paper titled, "Proposed Modifications to IRS' C-Notice Program" by Mark Druckman, November 1996. The IRS did not act upon Mr. Druckman's recommendations. However, the IRS' focus on electronic filing has been expanded significantly over the past few years. What may not have been possible then, is mandatory now. IRS Commissioner Mark W. Everson recently said, "The use of

technology through electronic filing can improve both our service and enforcement missions". IRPAC agrees with the Commissioner and recommends this implementation.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

August 13, 2005

Bert DuMars
Director
Electronic Tax Administration
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: IRS Electronic Services

Dear Mr. DuMars:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), this letter presents the considerable activity expended by the Large & Mid-Size Business Subgroup (LMSB) during 2005 as well as recommendations in regards to Electronic Tax Administration within the IRS.

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 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 applauds the recent implementations by the IRS of various electronic tax processes during the last several years. Recent developments now permit tax return preparers to validate payee's names and taxpayer identification numbers via an interactive on-line environment and by providing batch submissions. Additionally, as addressed by a 2004 IRPAC paper, tax practitioners who file at least five tax returns electronically can now access the Transcript Delivery System to request client account information relative to tax deposits.

During 2005, the LMSB Subgroup had the opportunity to visit the Philadelphia Service Center. This visit impressed upon the Subgroup the significant need for the further development of electronic processes within the IRS.

As a follow up to the 2004 paper presented by IRPAC titled "*Expansion of e-Services Program Transcript Delivery System"*, IRPAC is again recommending that the IRS grant access to the Transcript Delivery System to payers and withholding agents who are not currently eligible to participate in the *e-Service* program because of the five tax

return filing requirement, but file information returns electronically, sometimes in the millions, and utilize the TIN Matching Program. Below are the benefits to the IRS and the Payers as excerpted from the 2004 paper.

BENEFIT TO PAYERS: On-line access to the transcript database would save the payer significant time in obtaining the requested information. More timely receipt of account information would allow the payer to reconcile accounts before penalties and interest are assessed or account funds are levied. Payers who have the opportunity to review account information on a timely basis would avoid issues associated with the IRS moving monies between accounts to cover deficiencies.

BENEFIT TO THE IRS: Allowing payers to access account information electronically would minimize time spent by IRS personnel to copy and mail the transcripts, or to fax the information to the payer. IRS personnel would also spend less time assisting payers in reconciling accounts.

Under separate cover, IRPAC prepared a Discussion Paper to expand *e-Services* to permit payers to receive IRS' payee underreporting notifications (C-Notices) electronically. In addition to electronic delivery of C-Notices, IRPAC recommends that *e-Services* provide for the electronic delivery of CP2100/CP2100A Notice of Backup Withholding due to invalid name and TIN combinations (B-Notice). IRPAC also recommends that *e-Services* provide for the electronic delivery of information return penalty notices, 972CG. Currently these notices are mailed to the Payer's address contained on the IRS Business Master File, which for many filers is not the area that would process these notices. This often results in notices being routed and rerouted in the institution's internal mailing system, resulting in untimely processing of these notices. If the division within the institution had electronic access to these notices, processing efficiency and integrity would be significantly enhanced.

The LMSB Subgroup also met with Felicia Davenport, Tax Analyst, Philadelphia, Doug Peterson, IT Specialist, Business Modernization, Quyen Huyuh, Attorney, International Chief Counsel, Carl Cooper, Senior Counsel, International Chief Counsel and Paul Devlin, Mitre Corporation and discussed electronically receiving and transferring Form 6166, Certificate of Residency. IRPAC supports the continued development of this project which we believe will significantly reduce the current burden placed on the Philadelphia Service center to timely process the unexpected increase in requests that resulted when Form 8802 was introduced in 2004 and Form 6166 was changed to a country specific form.

Finally, the LMSB Subgroup also met with you (Bert DuMars, Director of Electronic Tax Administration), regarding the conceptual analysis of a "Clearing House" for information reporting. IRPAC understands that there are two conceptual phases to this project. First, the development of the Clearing House that would receive and

store Information Reporting Data, similar to the current Filing Information Returns Electronically (FIRE) System, and the Clearing House would subsequently provide or make the information reporting data available to the States and Federal Agencies. This would reduce the burden on multi-state institutions that must currently file information returns directly with specific states. The second phase of this project would provide information return recipients and tax practitioners the ability to electronically download information return data from the Clearing House for use in tax return preparation. Electronic access to this information would enhance the efficiency and integrity of information used for preparing a tax return. In addition, with proper consideration, the filing with the Clearing House may comply with the 1099/1098 information return mailing requirement resulting in a more timely and cost saving delivery of data. There are several hurdles that must be overcome prior to this concept moving to a pilot phase. These hurdles include funding, internal IRS and Treasury approval, and operational cost and process analysis. A summit between the IRS, other Federal Agencies, Industry and States will be held in 2006 to finalize these and other issues surrounding this concept. This 2006 Summit is the follow-on to a Summit that was held in June 2004 where this concept was originally proposed. IRPAC supports the development of this information reporting Clearing House.

IRPAC understands that the underlying development of *e-Services* and other electronic processes is based on appropriate funding. The IRS in some cases is being creative in procurement of funding by collaborating with institutions in the development of systems that will have direct impacts to participating institutions. In other cases it is imperative that the IRS allocate funding for the continued development of electronic forums which represent significant payback to the IRS, payees and payers.

If you have any questions or need additional information regarding IRPAC's comments regarding IRS' Electronic Services, please contact Dave Corthell at (407) 762 – 2502.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

April 4, 2005

Michelle L. Drumbl
Office of Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: IRS Notice 2004-71

Dear Ms. Drumbl:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), this letter is a follow-up to our September 8, 2004 letter titled, "Foreign Issuer Qualified Dividend Certification", that was presented at IRPAC's October 28, 2004 Public Meeting.

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 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.

Our letter of September 8, 2004 recommended that the IRS approve use of a standardized form, developed by the financial community, which foreign corporations would use to notify US payors that their dividends may be reported as "Qualified Foreign Dividends". In addition, IRPAC recommended that the IRS consider providing published and on-line repositories of foreign corporations with qualified dividends. On October 22, 2004, the IRS issued Notice 2004-71 that extended the 2003 simplified procedure as contained in Notice 2003-79 for tax year 2004 information reporting of foreign distributions to US persons. Section 4, of the Notice, stated that the Treasury Department and the IRS are developing detailed procedures for a proposed form for implementing the certification approach for information reporting. Based on this notice, LMSB members announced at the IRPAC public meeting that the September 8 letter was tabled awaiting further IRS guidance.

Now that the simplified procedure of identifying foreign corporations' qualified dividends has been in place for two tax years, we would like to bring to your attention how payors are operating utilizing the simplified procedures. Many payors with large

numbers of foreign issuer corporations and holders, contracted with an accounting firm to research and determine whether foreign corporations' dividends qualified based on the procedures outlined in IRS Notice 2003-79. The accounting firm researched tax years 2003 and 2004 independently. As a result of the accounting firms' efforts in reviewing approximately 18,000 foreign securities, it was determined that slightly more than half were classified as qualified. Small or medium sized payors either conducted independent research by checking companies' web sites, the Securities Exchange Commission's EDGAR web and/or called companies or their dividend-disbursing agents to inquire of the status of the foreign corporation and their payments. If it could not be established that a corporation's distribution qualified, then such distributions were classified as not qualified. When information was subsequently received that changed a corporation's classification, then payors were notified and corrected Forms 1099 were mailed. To date, less than 50 securities' qualified dividend classification corrections were necessary for tax year 2004, validating the accuracy of the simplified procedure analysis.

While the Treasury and IRS intend to issue guidance setting forth procedures in proposed form, as this has not yet been done, it is virtually inconceivable that such detailed procedures would be finalized in sufficient time to educate foreign corporations of the IRS' requirements for tax year 2005. In addition to educating the foreign issuers, if a form of certification would be required, most issuers would need to hire outside U.S. counsel and might even require Board approval to execute such a form. It is highly unlikely that this could be accomplished is time for the tax year 2005 reporting. Therefore, IRPAC recommends that the simplified procedures be extended for at least another year. Furthermore, the earlier such a decision is made, the better and even more accurate the process of identifying the qualified dividends would be. In addition, since qualified dividends are currently scheduled to sunset at the end of 2008, it may not be prudent to implement new certification procedures for only a few tax years which will result in many corporations dividends which are currently classified as qualified to be classified in future years as not qualified, due to failures by foreign corporations to file necessary corporate information with the IRS, vendors or other recipients. However, if Congress extends the reduction of taxes on dividends permanently, then the IRS might wish to revaluate the adequacy of the simplified procedures at that time.

If you have any questions or need additional information regarding IRPAC's comments, please contact Steve Neiss at (212) 778-8779.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

cc: Curt Wilson, Office of the Chief Counsel

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

April 8, 2005

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2005-25)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: IRS Notice 2005-25

Dear Madam or Sir:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), this letter recommends that guidance to implement the foreign investor reporting and withholding provisions introduced by the American Jobs Creation Act of 2004 (the "JOBS Act") be included on the 2005-2006 Guidance Priority List.

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 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.

Under the JOBS Act payors need to understand the requirements for U.S. Withholding Agents to exempt or reduce withholding on income paid to foreign investors.

- Interest Related Dividends: the JOBS Act created an exemption from U.S. withholding tax for interest related dividends paid by RICs to foreign investors. Exceptions to this exemption exist. One exception is that the exemption does not apply to a dividend paid to any person within a foreign country with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons. Other exceptions are (i) the beneficial owner cannot be a 10% shareholder of the payor RIC (this is an existing portfolio interest requirement), (ii) the beneficial owner must provide a statement that it is not a U.S. person (this is an existing portfolio interest requirement) and (iii)

the RIC must provide written notice to shareholders within 60-days after the close of its taxable year of the interest-related dividend.

- Short-Term Capital Gain Dividends: The JOBS Act eliminates the chapter 3 tax and withholding on short-term capital gain dividends paid by RICs to foreign investors. This exemption does not apply to nonresident aliens present in the U.S. for 183 days or more who would be subject to tax on capital gains under IRC §871(a)(2) (this is an existing long term capital gain requirement.) A RIC must provide written notice to shareholders within 60-days after the close of its taxable year of the short-term capital gain dividends.

- REIT Capital Gain Distributions: Code section 897(h)(1) generally provides that REIT distributions, to the extent attributable to gain from sales or exchanges of U.S. real property interests, are treated as gain recognized by a foreign person subject to 35% withholding. The JOBS Act amended section 897(h)(1) to provide that such treatment is inapplicable if (i) the distribution is made with respect to a class of stock that is regularly traded on an established securities market located in the United States and (ii) the foreign person receiving such distribution does not own more than five percent of the class of the REIT's stock at any time during the tax year within which the distribution is received. Thus, the distribution is treated as a dividend (subject to 30% withholding and any treaty reductions).

- Commonwealth of Puerto Rico Corporation Withholding: The JOBS Act amended Code section 881(b) so that dividends paid to corporations organized under the laws of the Commonwealth are withheld at the rate of 10% instead of 30%. A Puerto Rico corporate payee qualifies for the favorable withholding rate if: (i) less than 25% in value of the payee corporation's stock is beneficially owned by non-Puerto Rico persons, (ii) at least 65% of the gross income of the corporation is effectively connected with a trade or business in Puerto Rico for a three year period and (iii) no part of the income is used to satisfy obligations of persons who are not bona fide residents of Puerto Rico.

<u>Withholding agents need IRS guidance on the application of these JOBS Act provisions</u>:

- Withholding agents require basic guidance on whether these provisions can reduce withholding at the time of an income payment or must be applied only at year-end.

- Guidance on whether a foreign investor can obtain the benefits as provided in the JOBS Act when a distribution is paid or must a withholding agent withhold nonresident alien tax at the time of payment and reimburse qualified investors after the close of the tax year.

- As to interest related dividends, the IRS should identify the foreign countries with adequate exchange of information systems.

- As to RIC interest related dividends, RIC short term capital gains, and REIT capital gain distributions, withholding agents need IRS guidance on how to apply the exemptions intra-year. For example, may a withholding agent presume that a money market mutual fund pays interest related dividends in the absence of a payor's classification of the distribution? Such a presumption leads to no withholding when the dividends are paid to a documented nonresident. If such a presumption is unavailable, the payees will be forced to file U.S. nonresident income tax returns in order to pursue refunds.

- Withholding agents need IRS guidance on whether to report short-term capital gains on Form 1042-S.

- Withholding agents need IRS guidance on how payees can document their satisfaction of the 5% REIT ownership test, and how Puerto Rico corporations can document their reduced withholding on corporate dividends.

In the event that U.S. withholding agents lack guidance to reduce withholding at the time of payment, and their systems cannot reimburse investors subsequent to payment, payees would be compelled to seek tax refunds by obtaining U.S. TINs and filing nonresident tax returns. This alternative is quite burdensome to the investors and the IRS.

IRPAC was pleased that the IRS recently issued proposed regulations REG-125443-01, "Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations" under Section 1441 and the JOBS Act. The proposed regulation clarifies that no penalties will be assessed from underwithholding based on regulated investment companies' reasonable estimates of amounts of distribution designated as "interest-related dividends" and "short-term capital gain dividends." It is hoped that the IRS will issue additional guidance necessary for payors to accurately report and withhold income to foreign investors.

If you have any questions or need additional information regarding IRPAC's comments, please contact Steve Neiss at (212) 778-8779.

Sincerely,

cc: Carl Cooper, International Counsel, Branch 2
Crystal Foster, Office of Associate Chief Counsel (Procedure and Administration)
Curt Wilson, Office of the Chief Counsel

EXECUTIVE SUMMARY

TITLE OF PAPER: Form 6166 Processing

ISSUE STATEMENT: This paper addresses Internal Revenue Service processing of Form 6166, and recommends changes to that processing in order to increase speed of delivery and reduce taxpayer burden.

REMEDIES SOUGHT: Revisions and enhancements to IRS processing:

Short-term:
Eliminate the country-specific notation on Form 6166 except where necessary.
Enhance Philadelphia Service Center processing to reduce turnaround time on requests for Form 6166.

Longer-term:
Create an automated solution for Form 6166 processing as part of the IRS Electronic Tax Administration efforts.

IRPAC TEAM: Debra Heikkinen, David Corthell, Robert Foley, Paul Heller and Steven Neiss

IRS PARTICIPANTS: Felicia Davenport (IRS), Quyen Huynh (Counsel), Doug Peterson (Business Modernization), Paul Devlin (MITRE Corporation)

BACKGROUND: Form 6166 is a certificate of residency and is used in cross-border investing. The IRS changed its processing of Form 6166 in 2004 by introducing Form 8802 as the request for Form 6166, and by limiting each Form 6166 to a single country of investment. These changes have: slowed IRS processing of Form 6166 requests, increased taxpayer burden in handling Forms 6166, caused taxpayer investment expenses in delayed recovery of foreign taxes, and delayed taxpayer repatriation of foreign income.

SUMMARY OF RECOMMENDATIONS: IRPAC recommends that that IRS restore most of the pre-2004 processing protocols for Form 6166. That restoration would eliminate the country-specific Forms except where necessary, and would simplify and speed processing. Longer-term, IRPAC recommends that the IRS automate Form 6166 processing as a component of Electronic Tax

Administration (ETA). These recommendations would lead to cost savings for the IRS and taxpayers.

TAXPAYERS/INDUSTRIES AFFECTED: All US taxpayers types investing cross-border

BENEFITS TO TAXPAYERS: Reduced taxpayer burden in obtaining and storing Forms 6166, improved tax processing in non-US markets of investment, more timely repatriation of non-US income.

BENEFITS TO INTERNAL REVENUE SERVICE: Lower expense in processing Form 6166 requests. Migration to an automated / electronic solution enhances the IRS move to ETA processing.

DISCUSSION

Background

IRS Form 6166 is a certification of US tax residency. The IRS issues the Form on US Department of the Treasury letterhead. A US taxpayer uses the Form when he or she invests in markets outside of the US. When a market of investment has a bilateral income tax treaty in force with the US, the Form serves to certify the US tax status of the US investor. That tax status is an important component of treaty eligibility. That treaty eligibility leads to treaty rates of tax and withholding on an investor's investment income (such as dividends and interest) and sales proceeds. Even in the absence of an income tax treaty, many markets provide a favorable tax withholding regime for non-local residents. In those markets, the Form serves to certify that the US taxpayer (the investor) is tax resident in the US and accordingly is not tax resident in that local market.

Form 6166 is an annual document. In general, the IRS can issue Form 6166 only when it can verify that the individual or entity claiming tax residence has, for the year for which certification is sought, either (i) filed an appropriate income tax return or (ii) filed a return for the preceding year if the certification year return is not yet due. In order to issue the Form, the IRS searches the IRS master files to confirm the taxpayer's name, address, TIN, and return filing status.

The Philadelphia Service Center ("PSC") processes all Form 6166 requests. Prior to 2004, PSC could accept a faxed letter requesting Form 6166. That method provided an informal and effective entry into the processing environment. At that time, the Form 6166 was a "generic" form not limited to use in any particular market of investment. A US taxpayer would request a group of Forms for use across all markets of investment. For example, a typical US investor investing in twenty markets – ten with income tax treaties with the US and ten with no income tax treaties with the US – would apply for approximately 25 Forms 6166 per year. Some countries of investment require an original Form per investment account, some require a single original Form per year, while some will accept a photocopy of the Form. A US investor would hold the bundle of Forms, and use them as needed. The US taxpayer could contact PSC and request more Forms as needed.

2004 Changes

By July 2004, the IRS instituted two major changes to Form 6166 processing. These changes have led to tremendous volume increases in Form 6166 requests, and have led to material delays in Form 6166 processing. First, the IRS began issuing only "country-specific" Form 6166. The Forms now list a country name on the bottom of the page. The IRS has explained to IRPAC's LMSB Subcommittee that some US income tax treaties provide heightened treaty eligibility rules and the IRS wishes to control use of Form 6166 in those markets. Additionally, the IRS wishes to collect data on cross-border

investment, and limiting a Form 6166 to a single market simplifies that data collection. Their solution led to listing a single market name on each Form – not just the Forms for the restrictive markets of investment.

The IRS decision to list a country of investment on all Forms 6166 has led to tremendous volume increases in Form 6166 requests. Where a typical international investor needed approximately 25 Forms per year to cover 20 markets, that same investor now needs well over 100 Forms. The Forms are not usable outside the market identified on the Form, so a taxpayer cannot use a set of generic Forms to cover multiple markets, or multiple accounts in a single market. This volume increase led to a gigantic increase in Form processing for taxpayers and their custodians. For example, a large custodian must now request, store and control several hundred thousand Forms for its US clients. This effort comes at a cost for personnel and space. Additionally, the absence of non-country-specific Forms means that a US taxpayer that invests into a new market needs to request more Forms to cover that market. There is no file copy of a generic Form available for that investment. Delayed availability of Form 6166 (see "Effects of 2004 Changes" below) leads to lost income for the US taxpayer.

The second year 2004 change to Form 6166 processing is the IRS creation of Form 8802 as the sole method for a taxpayer to request Form 6166. The Form 8802 requires that a taxpayer list the markets for which it requests Form 6166 – even though the IRS needs to control Form 6166 issuance for only a few markets. The Form 8802 also requires that a taxpayer identify its entity classification and the type of return it files – even though the IRS already has that information.

Note that September 2005 revisions to Form 8802 and its instructions have responded to the country-specific concerns and adopt, in part, IRPAC's recommendations. The instructions now note that the IRS will eliminate country-specific Forms 6166, although the 8802 will continue to request the country information. However, at the time of this writing, IRPAC understands that the IRS will continue to print country information on Forms 6166 at least through the end of 2006.

Effects of 2004 Changes

The combination of the 2004 changes – country specific Forms leading to volume increases, and mandatory use of Form 8802 – have led to quite a delay in PSC processing of Forms 6166. The process took approximately one month prior to 2004. The process now often takes approximately two months to complete.

This enlarged delay leads to costs for US taxpayers. First, in some markets (most notably Italy, but also Japan in some cases, and others), a US investor that lacks the Form 6166 upon market entrance must suffer local tax withholding and then file for tax reclaims to recover that tax. Had the Form 6166 been available on time (at the time of investment), the reclaim would be avoided because the US taxpayer would have accessed the treaty tax rate. The "float" for US investors waiting to recover avoidable tax reclaims costs millions of dollars. Second, many large US taxpayers with multinational operations will

not repatriate foreign income back into the US until they have the Forms 6166 in place to attract the correct local market tax withholding rate. As a result, the delay in Form 6166 processing harms the cash flow and reinvestment opportunities of US taxpayers.

Recommendations

IRPAC has short-term and long term recommendations for Form 6166 processing:

Short-term

1. Immediately end Form 6166 identification of the country of investment except where necessary. The IRS can still control Form 6166 issuance for markets with heightened treaty residence rules, but this change will restore investment flexibility and income opportunities for US taxpayers.

   As mentioned above, September 2005 revisions to Form 8802 and its instructions adopted, in part, IRPAC's recommendations on this point. The instructions now note that the IRS will eliminate country-specific Forms 6166, although the 8802 will continue to request the country information. However, at the time of this writing, IRPAC understands that the IRS will continue to print country information on Forms 6166 at least through the end of 2006.

2. Increase staffing at the PSC Form 6166 team to reduce the backlog and recent delays in Form 6166 processing.

   This solution would save taxpayer money currently tied up in non-US tax reclaims due to inability to secure prompt Forms 6166.

Longer-term

In the longer term, an automated solution as part of Electronic Tax Administration (ETA) provides the best approach. The LMSB Subcommittee of IRPAC has learned that electronic country-to-country data exchange of Form 6166 information may be possible as part of the OASIS project among governments. IRPAC requests that the IRS – whether PSC, ETA, or LMSB – fund an electronic solution to Form 8802/6166 processing. That electronic solution would save IRS and taxpayer funds, and would move this process out of its current manual environment.

Affected Taxpayers

Form 6166 processing affects all US taxpayers investing cross-border.

Benefits to Taxpayers

These proposed short-term and longer-term changes to Form 6166 processing will reduce taxpayer burden in obtaining and storing Forms 6166, improve tax processing in non-US markets of investment, and allow more timely repatriation of non-US income.

Benefits to the IRS

These proposed short-term and longer-term changes to Form 6166 processing will lower expense in processing Form 6166 requests. Migration to an automated / electronic solution will enhance the IRS move to ETA processing.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

February 25, 2005

CC:PA:LPD:PR (NOT-156854-04)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Section 6043A and IRS Notice 2005-7

Dear Sir or Madam:

This letter is the Information Reporting Program Advisory Committee's ("IRPAC") comments with respect to new information reporting rules provided in Section 6043A as enacted by the American Jobs Creation Act of 2004. It is IRPAC's response to the Internal Revenue Service's ("IRS") request for comments as detailed in IRS Notice 2005-7. Our response also addresses the interaction of the new Section 6043A reporting of mergers and acquisitions and the temporary and proposed regulations under Sections 6043 (c) and 6045 of the Internal Revenue Code, regarding information reporting requirements of corporate transactions, including transactions where control of a corporations is acquired or when a corporation undergoes a recapitalization or other substantial change in its capital structure.

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.

In March 2003, IRPAC submitted comments with respect to temporary and proposed regulations addressing information reporting requirements of corporate transactions described in Section 6043(c) and 6045 of the Code. IRPAC made five recommendations:

1. The IRS should consider an IRS publication and on-line repositories of Form 1099-CAP information;

2. The IRS should encourage the Depository Trust Company to issue "Important Notices" advising of corporate transactions subject to Form 1099-CAP reporting;
3. The IRS should require affected corporations to report transactions subject to Form 1099-CAP reporting no later than 30-days after record date;
4. The IRS should allow brokers the option to use Form 1099-B as an alternative to Form 1099-CAP; and,
5. The IRS should permit Forms 1099-CAP to be included on a consolidated substitute Form 1099 customer statement.

In December 2003, the IRS withdrew the proposed regulations published November 2002 (REG-143321-02) and re-issued temporary and proposed regulations (REG-156232-03). IRPAC was very pleased that the new regulations either accepted or modified, for the better, IRPAC's recommendations. Specifically, the regulations allowed a payor to furnish Form 1099-B in lieu Form 1099-CAP, as many payors already furnish information on Forms 1099-B to the actual owners of stock showing the fair market value of the new securities received in taxable corporate reorganizations. Computer systems were already in place to report these transactions.

In October 2004, the American Jobs Creation Act of 2004 was enacted and added Section 6043A requiring information reporting relating to taxable mergers and acquisitions. Section 6043A supplements the temporary and proposed regulations under Section 6043 (c) and 6045. The IRS has requested comments relating to the above Internal Revenue Code sections.

(a) Coordination with the requirements of the temporary and proposed regulation under Section 6043 (c) and 6045.

In regard to the new Section 6043A, IRPAC believes that the rules for 6043 (c) and 6045 for reincorporations, recapitalization and changes in capital structure, are sufficient and should generally be applicable to mergers and acquisitions under Section 6043A. These sections overlap and are substantially similar. However, the design of the forms require changes. See the discussion under (d) below.

(b) Rules for reporting by nominees.

The rules as detailed under Sections 6043 (c) and 6045 are sufficient, however the IRS should permit aggregate or separate Form 1099-B reporting of the cash and fair market value of stock. Many payors' systems process the cash and FMV separately and these transactions cannot be married easily.

(c) Whether thresholds should be adopted.

IRPAC does not see a need for a $100 million threshold. In fact, any threshold may delay processing and may cause customer relations disputes with taxpayers for those payors who report all taxable mergers and exchanges regardless of size. Therefore from a payor standpoint no threshold is necessary.

(d) Design of forms.

On May 27, 2004, the Internal Revenue Service issued the 2004 Form 1099-B with three new boxes and five other box number changes. These changes were a result of incorporating on Form 1099-B some of the data elements that were previously required on Form-CAP. As a result, many of the advantages that would have been derived in eliminating Form 1099-CAP were lost due to the necessary systems re-write of programs to create year-end consolidated payee statements and prepare electronic and magnetic media files submission of Forms 1099-B to the IRS. Those firms who actually programmed for Form 1099-CAP needed to reprogram their systems again.

We wish to thank Nancy Rose for attending a meeting with IRPAC's Large & Mid-Size Business subgroup held in the afternoon of June 22, 2004. Also in attendance were Carole Barnette and Robert Erickson (via conference call) of Tax Forms and Publications. As a result of the meeting, we learned that the IRS had already published the 2004 Forms 1099-B and changes were no longer possible. A form revision would have resulted in significant additional government costs. In addition, these changes had already been incorporated to Publication 1220.

The publication of the 2004 Form 1099-B was troublesome because of the limited number of inversion transactions that occurred. In 2001 we were aware of only two inversion transactions (companies that reincorporated offshore), four companies in 2002, three companies in 2003 and none in 2004. Consequently many payors decided only to change the 2003 form's box 5, "description" to box 7 on their 2004 Form 1099-B and Consolidated Tax Reporting Statement programs from. If a re-incorporation occurred, as an interim measure, firms were prepared to write special ad–hoc programs to report the security transactions separately. However, that may have caused taxpayer confusion because all other transactions, sales, redemptions, and other corporate actions would be detailed on the consolidated tax reporting statements. This was a moot point for tax year 2004, as there were no required reportable inversion transactions.

We are in a similar position for tax year 2005, as the IRS published the 2005 Form 1099-B on December 23, 2004, without any changes to boxes 5 and 6. Since neither the old nor new statute required forms' new data elements for broker reporting, we suggest that merger and acquisition information reporting on Form 1099-B be finalized, eliminating Form 1099-B boxes 5 and 6 or making them optional.

(e) Appropriate filing dates.

We believe that the information reporting rules be effective after December 31 in the year these regulations are finalized. This will provide an opportunity to educate corporations in their responsibility to provide merger and acquisition information to the financial community and the IRS.

****

RECOMMENDATIONS:

I. In finalizing regulations under Section 6043A, IRPAC recommends that the IRS consider revising the 2005 Form 1099-B and instructions and revert back to the same form that was used in previous years.

a. We request that the new data element for box 5, "No. of shares exchanged", be incorporated in box 7, as this element is usually included in the "Description" box." In fact, the "Description: box instructions provide an example, "**100 shares** of XYZ Corp. stock."

b. We believe that the new data element in box 6, "Classes of stock exchanged" is redundant. The class of stock can be determined by the CUSIP (Committee on Uniform Securities Identification) number as provided in Form 1099-B, box 1b and/or the description of the security in box 7. When an issuer requests a new CUSIP number, he must provide certain basic information for debt or equity. If an equity: the name, address, telephone number, description, and if preferred, the type is required. The CUSIP number can identify a debt obligation. The seventh and eight characters are letters. All others are equities. Payors should provide the preferred security type in box 7. Therefore, the CUSIP number in conjunction with the description provides the necessary information in identifying the class of stock.

c. We recommend the "Corporation's name, street address, city, state and zip code" be deleted as it serves no purpose and is not required for broker reporting under the old or new statute. If a taxpayer has an inquiry, he needs to inquire with the payer rather than the corporation who does not have his account or transactions on their books and records.

d. If the IRS believes that changes to Form 1099-B, boxes 5, 6 and the corporation's name and address would present a problem for the Service, we request that, at a minimum, the information in these boxes be "optional."

e. Box 2 instructions states that "if the aggregate amount reported includes a loss from a corporation that has undergone a change in control or substantial change in capital structure, advise the recipient separately of the loss amount and check box 12." This instruction assumes that brokers compute gains and losses for recipients. Such computations are made for select accounts for information purposes only and are not tax documents. It has always been the clients' responsibility to compute their capital gains and losses on their tax returns. Brokers intend to check box 12 for every recipient of Form 1099-B for those corporations when no losses are recognized.

II. IRPAC recommends that the merger and acquisitions regulations are effective after December of the year it is finalized.

Finalizing these regulations after December 31 would give both corporations and payors the opportunity to plan communication procedures and processing requirements necessary in reporting taxable exchanges and mergers.

III. In the event that merger and acquisition regulations are finalized and effective in 2005, IRPAC recommends that 2005 Form 1099-B, boxes 5, 6, and corporation name and address are optional data elements.

We request that 2005 Form 1099-B, boxes 5, 6 and corporation's name and address are optional, as long as the taxable exchange transactions are reported to the payor and IRS. It would be a disservice to clients to report these transactions on a separate Form 1099-B, as currently planned for inversion transactions. All clients' sales, redemptions and corporate actions should be reported on the same form for consistency and to avoid customer confusion.

IV. Payors should be permitted to report the cash and the fair market value amounts either as a single transaction or as separate transactions.

Most payors book payments made in cash and in property separately, even though both types of consideration are received in exchange for the same security. Due to these processing and systems limitations, some payors cannot readily combine the amounts of cash and fair market values of property into a single reportable transaction. Rather, these payors need to report the amounts of cash and fair market values of property as separate transactions on the same type of information return. The taxpayer should be able to easily identify all transactions relating to the taxable corporate event, whether cash, property or both since many payors list sale and exchange transactions individually in a combined Form 1099-B. We therefore request that the final regulations permit either the combined or separate reporting of taxable consideration received in corporate actions.

V. IRPAC does not see a need for a dollar threshold.

Most payors would rather report all taxable merger and acquisition transactions rather than try to determine which transactions exceed $100 million. If all taxable transactions were reportable, payors would expect to receive information for every taxable merger/acquisition. However, if information were not forthcoming, payors would not know whether it was due to a corporation's failure to report the transaction to the financial community and IRS or a result of the merger/acquisition that was less than $100 million dollars. Therefore, it would be advantageous to the payor, recipient and IRS to require reporting of all taxable merger/acquisition transactions.

If you have any questions or need additional information regarding IRPAC's comments, please contact Steve Neiss at (212) 778-8779.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

Cc: Carole Barnette, Tax Forms and Publications Division
Robert Erickson, Tax Forms and Publications Division
Michael Hara, Office of Associate Chief Counsel
Kurt Wilson, Chief Counsel's Office

EXECUTIVE SUMMARY

TITLE OF PAPER: Form 1042-S Reporting on Substitute Payments made to Nonresident Aliens in Cross-Border Securities Lending Transactions

ISSUE STATEMENT: This paper discusses issues related to Form 1042-S with respect to the reporting of substitute payments made in a series of securities loans where the payments are generally from one non-US person to another non-US person. In such instances, there may be either reduced or no withholding of tax required. Without some guidance, withholding agents are reporting these transactions in disparate manners. Some of the reporting generates audit inquiries from the IRS due to a mismatch between the tax reported as withheld and the withholding tax rate.

REMEDY SOUGHT: Guidance through Notice and/or Amendment to Form 1042-S

IRPAC TEAM: Debra Heikkinen, David Corthell, Robert Foley, Paul Heller and Steven Neiss

IRS PARTICIPANTS: Carl Cooper, Keith Jones

BACKGROUND: Follow-up to 2002 IRPAC paper entitled "Tax Liability of Nonresident Aliens of Cross-Border Securities Lending Transactions and Related Form 1042-S Reporting Issues."

SUMMARY OF RECOMMENDATIONS:

1) In most instances there will be no additional withholding required. As such, it is recommended that in cases of no withholding, there should be no Form 1042-S reporting required.

2) As an alternative to no reporting as well as for those cases where some withholding is required, it is recommended that there be a new Income Code and/or Exemption Code added to cover "Payments under Notice 97-66".

TAXPAYERS/INDUSTRY AFFECTED: Financial service industry stakeholders (such as banks and brokers) that enter into securities lending transactions.

BENEFIT TO TAXPAYERS (PAYERS & PAYEES): There would be consistency and certainty of reporting rather than taxpayers reporting in disparate manners due to lack of guidance.

BENEFITS TO INTERNAL REVENUE SERVICE: The IRS would not generate and process discrepancy notices that result from incorrect Forms 1042-S that are filed by payers engaged in securities lending transactions. In addition, the IRS statistical data gathering from Forms 1042-S would be enhanced.

DISCUSSION

I. CURRENT REGULATIONS AND NOTICES

a) Taxation of Substitute Payments in Cross-Border Securities Lending Transactions

On October 6, 1997, the IRS issued final regulations with respect to the *source and character* of substitute payments made in cross-border securities lending transactions between US and non-US persons. The regulations were issued to eliminate certain tax differences generated by similar economic investments.

Internal Revenue Code § 1058(a) describes a securities lending transaction as the transfer of securities made pursuant to a written agreement that: (i) provides for a return to the transferor of identical securities: (ii) requires substitute payments; and (iii) does not reduce the transferor's risk of loss or opportunity for gain on the securities transferred by allowing the lender to terminate the loan upon notice of not more than five business days.

The final regulations provide that a substitute payment made in connection with a securities lending transaction is **sourced** in the same manner as the distributions with respect to the transferred security for purpose of I.R.C. § 861 and Treas. Reg. § 1.862-1. This 'transparency' rule applies to payments made to both US and foreign lenders. The source rule applies for all purposes of the I.R.C in a cross-border securities lending transaction. Thus, a substitute payment made in connection with a US securities loan is US-sourced.

The final regulations provide that for purposes of determining tax liability under I.R.C. §§ 871 and 881, nonresident alien tax under Chapter Three, and for treaty purposes, a substitute payment made to a *foreign* lender is **characterized** using the transparency rule. Treasury Regulations §§ 1.871-7(b) (2) and 1.881-2(b)(2) state that a substitute dividend payment received by a foreign person pursuant to a securities lending transaction shall have the same character as the distribution received with respect to the transferred security. Thus, a substitute dividend payment made by a US borrower of shares of a US corporation to a foreign lender of the shares is considered a US dividend and will be subject to US withholding tax. However, the transparency rules do not apply when characterizing substitute payments made to US lenders. These payments are considered 'other' amounts and not dividends. (This treatment ensures that both the recipient of the real dividend and the recipient of the substitute payment do not take a Dividend Received Deduction or other tax benefit.)

Treasury Regulations § 1.861-3(a)(6) defines a substitute dividend payment as a payment made to the transferor of a security in a securities lending transactions, of an amount equivalent to any dividend distribution, which the owner of the transferred security is entitled to receive during the term of the transaction.

Shortly after these regulations were issued, taxpayers brought to the attention of the IRS and Treasury that, in certain circumstances, the total US withholding tax paid with respect to a securities loan or a series of such transactions could be excessive due to the application of the final regulations (i.e., the cascading dividend scenario). That is, if US securities were loaned through tiers of borrowers within the same foreign country or within countries having the same dividend tax treaty rate, i.e., "foreign-to-"foreign" loans, as US withholdings tax would potentially apply to **each** substitute payment in the chain of payments. The total withholding tax applied in a series of securities loans could possibly exceed the thirty percent statutory rate.

b) Withholding Tax Imposed on Foreign-to-Foreign Substitute Payments in Securities Lending Transactions (Notice 97-66)

On November 13, 1997, the IRS issued Notice 97-66 to clarify the amount of withholding tax imposed on *foreign-to-foreign* substitute payments made in securities lending transactions. As it relates to substitute dividend payments, the Notice is generally intended to limit the thirty percent US withholding tax to the tax that would have applied had the underlying dividend been paid to the foreign payer of the substitute payment, or, if more, the tax that would have applied had the underlying dividend been paid directly to the foreign payee of the substitute payment. This amount may be reduced to the extent that the total US tax actually withheld on the underlying dividend and previous substitute payments is greater than the amount of tax that would be imposed on US dividends by a US person directly to the payer of the substitute payment. The Notice mandates that the 'formula' above be used in foreign-to-foreign payments.

For example, if a US-source dividend paid to foreign person, F, is subject to a fifteen percent rate and F then makes a substitute payment in respect of the dividend to foreign person G, F is not required to withhold provided the payment of the dividend to G would have been subject to withholding tax of not more than fifteen percent but must withhold an additional fifteen percent of the dividend amount if G was subject to a thirty percent tax rate (i.e., G is not eligible for a tax treaty reduction of the statutory thirty percent withholding tax rate). The Notice ensures that in a cascading dividend scenario, no more than the statutory thirty percent is withheld across an entire chain of equity loans.

II. INFORMATION REPORTING ISSUE WITH CURRENT REGULATIONS AND NOTICE 97-66

a) Form 1042-S

Notice 97-66 addresses the calculation of the *withholding tax* amount for each substitute payment made in a series of securities loans. The Notice also limits the withholding agent's liability for withholding based on the formula in the Notice.

However, the Notice does not specifically cover Form 1042-S reporting for **each** substitute payment made in a series of loans by different principals. It is also not clear how any amount withheld by the upstream payer is to be reflected on the Form 1042-S prepared by the next payer in the chain. As a result, payers are reporting such transactions in disparate and often inconsistent manners. In accordance with current Form 1042-S Instructions, Forms 1042-S prepared in each foreign-to-foreign securities loan may generate Form 1042-S discrepancy notices from the IRS. Notices are generated by the IRS when certain required fields on Form 1042-S do not match, e.g., the actual withholding amount in Box 7 does not agree with the expected withholding amount for a particular payee based on the country code. The example below illustrates the problem with Form 1042-S reporting.

b) Example of Multiple Securities Loans

Facts: A, a UK corporation, borrows securities of X, a US corporation, from B, a Cayman entity. A borrows these shares to cover its short sale with C. A holds the securities over record date and thus receives the real dividend from X. X's paying agent pays a $100 dividend to A, who is subject to fifteen percent withholding tax. A receives an eighty-five dollar net payment. A makes a US source substitute dividend payment to B, who is subject to thirty percent tax.

Dividend Payment From X to A: Tax Liability is Satisfied and Form 1042-S is Correct

A's tax liability under I.R.C. § 882(a) is fifteen dollars (fifteen percent withholding tax rate multiplied by $100 gross dividend). A receives eighty-five dollars net. Since A's tax liability under I.R.C. § 882(a) is fifteen dollars and that liability is satisfied by the fifteen dollar withholding, A has no additional tax liability. X prepares Form 1042-S which includes $100 gross income in Box 2: fifteen dollars withholding in Box 7; fifteen percent tax rate in Box 5 and country code of UK (i.e., fifteen percent country) in Box 16. This Form 1042-S is correct. The IRS will not generate a Form 1042-S discrepancy notice because A is a UK entity that is subject to fifteen percent withholding rate per the US-UK tax treaty. A tax of fifteen dollars was withheld on the gross amount of $100. Thus, Form 1042-S reflects the proper withholding at the proper rate for UK entity.

Substitute Dividend Payment From A to B: Tax Liability is **Not** Satisfied Completely by Applying Notice 97-66, and Form 1042-S will be Incorrect.

The substitute payment from A to B is treated as a US-source dividend payment per the final regulations. A must withhold an *incremental* fifteen percent on this substitute payment per Notice 97-66. Note that as a Cayman entity, B should be withheld at a rate of thirty percent because there is no US tax treaty with the Cayman Island. However, X already withheld fifteen percent upstream from A and thus, B is only withheld the incremental fifteen percent. B receives a seventy dollar net payment. B's tax liability under I.R.C. § 882(a) is thirty dollars (thirty percent withholding tax rate multiplied by $100 gross dividend). However, B was only withheld fifteen dollars. B would be **liable** for an additional fifteen dollars under I.R.C § 882(a). Notice 97-66 ensures that the *withholding* is proper. Using Notice 97-66, the proper tax has been withheld in the entire transaction and thus, there should be no additional tax liability to any party in this example.

This Form 1042-S prepared by A to B will be **incorrect** under some reporting methodologies. For example, if A prepares a Form 1042-S that includes $100 gross income in Box 2; fifteen dollars actual withholding in Box 7; thirty percent tax rate in Box 5 country code for Cayman Islands in Box 16 then there is a mismatch between the withholding tax rate (Box 5) and the tax withheld by that agent (Box 7).

Form 1042-S Instructions currently require the actual withholding amount to be reflected in Box 7 and the tax rate and country code of the recipient. With the exception of Form 1042-S reporting on Non-Qualified Intermediaries, Form 1042-S Instructions do not contemplate a situation where there is an upstream withholding on one entity and an incremental withholding on the next entity in the chain of payments. In the above example, the IRS' computers will multiply the withholding rate of thirty percent for the Cayman entity by the $100 gross income and expect

thirty dollars to be in Box 7 as tax withhold. This Form 1042-S will likely generate a notice from the IRS to the payer requesting the additional fifteen dollars in tax. Some taxpayers report this type of transaction in a different manner.

Substitute Dividend Payment From A to B: Tax Liability is Satisfied Completely by Applying Notice 97-66, but Form 1042-S will be Incorrect.

If instead of being a Cayman entity, B is a UK entity, A would not be required to withhold an *incremental* fifteen percent on this substitute payment per Notice 97-66. As a UK entity, B should be withheld at a rate of fifteen percent under the US tax treaty with the UK. Since, X already withheld fifteen percent upstream from A and thus, no withholding is required on the payment to B. B receives an eighty-five dollar net payment. B's tax liability under I.R.C. § 882(a) is fifteen dollars. Using Notice 97-66, the proper tax has been withheld in the entire transaction and thus, there should be no additional tax liability to any party in this example.

It is unclear how the Form 1042-S from A to B should be prepared. If A prepares a Form 1042-S that includes $100 gross income in Box 2; _-0- actual withholding in Box 7; fifteen percent tax rate in Box 5 country code for UK in Box 16, the IRS' computers will multiply the withholding rate of fifteen percent for the UK entity by the $100 gross income and expect fifteen dollars to be in Box 7 as tax withheld instead of -0-.

If A prepares a Form 1042-S that includes $85 gross income in Box 2; _-0- actual withholding in Box 7; fifteen percent tax rate in Box 5 country code for UK in Box 16, the IRS' computers will multiply the withholding rate of fifteen percent for the UK entity by the $85 gross income and expect twelve dollars and seventy-five cents to be in Box 7 as tax withheld instead of -0-.

This Form 1042-S will likely generate a notice from the IRS to the payer requesting the additional tax. Some taxpayers may report such transactions in different manners.

RECOMMENDATIONS

The IRPAC would be pleased to work with the IRS to either craft a Notice setting forth the correct reporting and/or to amend Form 1042-S to allow for proper reporting in Notice 97-66 transactions.

1. FOREIGN-TO-FOREIGN PAYMENTS WITH NO INCREMENTAL WITHHOLDINGS REQUIRED

   With regard to foreign-to-foreign payments where no incremental withholding tax results, we have two alternative recommendations:

   a) The most efficient solution would be to not require any form of reporting on such transactions. These would generally be instances where foreign payer does not regularly engage in transactions wherein they pay US sourced income. As such, they do not have any systems in place to perform tax reporting. As such, requiring reporting where there is no additional withholding tax required is an unnecessary burden which would not yield any significant benefit.

   b) If the IRS determines that reporting should be made, we recommend that a new exemption code be added for "Payments under Notice 97-66". This would allow

for -0- tax to be in Box 7. Again, we would recommend that the instructions for Box 2, Gross Income, allow for reporting of the actual cash paid. which would generally be the net amount received from the upstream paying agent after withholding appropriate taxes. This would allow for a correct Form 1042-S without generating any error notice.

2. FOREIGN-TO-FOREIGN PAYMENTS WITH INCREMENTAL WITHHOLDINGS REQUIRED

In instances where incremental withholding of tax is required, we recommend that Form 1042-S be amended by adding a new income code for "Payments under Notice 97-66". We also recommend that the instructions in such cases permit the Gross Income in Box 2 to be the actual net income received from the upstream party. In this manner, the actual cash flow can be tracked through the payers' systems resulting in the Form 1042-S generally reflecting that the beneficial owner receives seventy percent of the original dividend. In such instances, we would expect that no penalty notice would be generated.

TAXPAYERS/INDUSTRY AFFECTED

Financial service industry stakeholders (such as banks and brokers) that enter into securities lending transactions .

BENEFITS TO TAYPAYERS (PAYERS & PAYEES)

Tax liability for nonresident aliens would be completely satisfied. Payees would not receive incorrect Forms 1042-S resulting from securities lending transactions. There would be consistency in reporting methodology.

BENEFITS TO INTERNAL REVENUE SERVICE

Generation and processing of discrepancy notices resulting from incorrect Forms 1042-S filed by payers in securities lending transactions would be significantly reduced. The IRS statistical data gathering from Forms 1042-S would be enhanced.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

WAGE & INVESTMENT SUBGROUP REPORT

CHARLES F. EGENDER
REGINA TARPLEY
PATRICIA A. RHODES, SUBGROUP CHAIR

OCTOBER 27, 2005

INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE

WAGE & INVESTMENT
SUBGROUP REPORT

During 2005, the W&I Subgroup worked with IRS representatives from Tax Forms and Publications and Media and Publications on several information processing and reporting issues, including improvements to Schedule C instructions, Schedule A instructions, Publication 587 instructions, and Publication 517 worksheets. The following projects were completed by the W&I subgroup.

- **Letter:** ***(Rhodes)*** Meal and Snack Deductions for In-Home Daycare Providers
- **Letter:** ***(Egender)*** Mortgage Interest Reporting on Schedule A
- **Letter:** ***(Rhodes)*** Form 8829 – Expenses for Business Use of Your Home and Publication 587 – Business Use of Your Home
- **Letter:** ***(Rhodes)*** Publication 517 – Social Security and Other Information for Members of the Clergy and Religious Workers – Worksheet for Ministers.

In addition, the W&I Subgroup will continue to work with the IRS regarding the development of a Practitioners Reference Guide dependent upon the results of surveys given to practitioners this year.

- **Letter:** ***(Egender)*** Practitioner's Reference Guide

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Robert Erickson
Senior Technical Advisor
Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Ms. Denise Fayne
Director, Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: **Meal and Snack Deductions for In-Home Daycare Providers.**

Dear Mr. Erickson and Ms. Fayne:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), I want to thank you for the opportunity to provide the Internal Revenue Service with comments and suggestions regarding proposed changes in Instructions to Schedule C under Part V. Other Expenses.

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 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.

Currently there is no easy way for in home daycare providers to find the IRS standard allowances provided for snacks and meals. Publication 587 instructs those who are eligible to claim the standard Snack and Meal rates to make that claim in Part V of Schedule C. The Wage & Investment sub-group recommended a reference to Publication 587 be added to the Instructions to Schedule C under Part V, Other Expenses.

Robert Erickson, Senior Technical advisor for Tax Forms and Publications, acted on our suggestion and notified us that *"The Individual Forms & Publications Branch concurs with your suggestion to reference Pub. 587, Business Use of Your Home, and will add the appropriate language to the Schedule C instruction. Thank you for your contribution to improve our tax products."*

The IRPAC appreciates the opportunity to comment and make recommendations to the IRS concerning current publications, forms or procedures.

If you wish to discuss these comments further, please call Patricia Rhodes EA, Chair, W&I Subgroup at 904-781-1040, or contact by email at PRh1040@aol.com.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Robert Erickson
Senior Technical Advisor
Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Ms. Denise Fayne
Director, Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: **Mortgage Interest Reporting on Schedule A.**

Dear Mr. Erickson and Ms. Fayne:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), I want to thank you for the opportunity to provide the Internal Revenue Service with comments and suggestions regarding proposed changes to the instructions for Mortgage Interest Reporting on Schedule A.

IRPAC was established in 1991 in response to 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 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.

In today's society, many individuals purchase homes along with other individuals and have a joint mortgage they pay. The financial institutions report the mortgage interest paid on a Form 1098 with all of the mortgagee's names on it, but with only one Social Security Number.

The instructions for Line 10, Schedule A say *"Report the mortgage interest and points reported to you on Form 1098."* A taxpayer whose name, but not their Social Security

Number, appears on the Form 1098 may well think they meet the criteria of this statement and report their share of the mortgage interest on Line 10. In fact, the instructions for Schedule A, line 11 tell this taxpayer to enter their share of the mortgage interest and points on line 11. The taxpayer whose Social Security Number does not appear on the Form 1098 and who reported their share of the mortgage interest on line 10 may well receive a correction notice from the Internal Revenue Service due to the matching process.

The Individual Tax Forms & Publications Branch has agreed to revise the instructions for Schedule A, line 10 by changing the first sentence as follows:

Enter on line 10 mortgage interest and points reported to you under your social security number (SSN) on Form 1098.

In addition, they will add the following sentence at the end of the first paragraph of the line 10 instructions:

If you and at least one other person (other than your spouse if filing jointly) were liable for and paid interest on the mortgage, and the interest was reported on Form 1098 under the other person's SSN, report your share of the interest on line 11 (as explained in the line 11 instructions).

The IRPAC appreciates the opportunity to comment and make recommendations to the IRS concerning current publications, forms or procedures.

If you wish to discuss these comments further, please call Charles Egender CPA, W&I Subgroup, at 410-838-0330, or contact by email at charles.egender@verizon.net.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Robert Erickson
Senior Technical Advisor
Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Ms. Denise Fayne
Director, Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: **Form 8829 - Expenses for Business Use of Your Home and Publication 587 - Business Use of Your Home.**

Dear Mr. Erickson and Ms. Fayne:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), I want to thank you for the opportunity to provide the Internal Revenue Service with comments and suggestions regarding proposed changes in Publication 587, Business Use of Your Home.

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 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.

Form 8829, Expenses for Business Use of Your Home, explained the prorating of business use for Part-Year In-Home Daycare Providers differently than Publication 587. This caused some confusion to those who used the Publication 587 but not the Form 8829 Instructions.

Robert Erickson acted on our discussion and agreed to add instructions regarding

Part-Year In-Home Daycare Providers to Publication 587 under “Daycare Facility” and cover them in an example.

The IRPAC appreciates the opportunity to comment and make recommendations to the IRS concerning current publications, forms or procedures.

If you wish to discuss these comments further, please call Patricia Rhodes EA, Chair, W&I Subgroup, at 904-781-1040, or contact by email at PRh1040@aol.com.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Robert Erickson
Senior Technical Advisor
Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Ms. Denise Fayne
Director, Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: **Publication 517 - Social Security and Other Information for Members of the Clergy and Religious Workers - Worksheet for Ministers.**

Dear Mr. Erickson and Ms. Fayne:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), I want to thank you for the opportunity to provide the Internal Revenue Service with comments and suggestions regarding proposed changes in Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers, Worksheet for Ministers.

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 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.

Ministers who receive a W-2 with Parsonage Allowance and/or Utilities Allowance shown in Box 14 are required to attach completed worksheets along with Schedule C EZ, Form 2106-EZ, and Schedule SE. These complex worksheets are shown completed in Publication 517 as a part of a comprehensive example. The problem was that no blank worksheets were provided to the taxpayer to complete and attach to their

tax return.

Robert Erickson acted on our discussion and has agreed to add blank worksheets in Publication 517 for the taxpayer's use.

The IRPAC appreciates the opportunity to comment and make recommendations to the IRS in regards to current publications, forms or procedures.

If you wish to discuss these comments further, please call Patricia Rhodes EA, Chair, W&I Subgroup, at 904-781-1040 or contact by email at PRh1040@aol.com.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Robert Erickson
Senior Technical Advisor
Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Ms. Denise Fayne
Director, Tax Forms and Publications
Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224

Re: **Practitioner's Reference Guide.**

Dear Mr. Erickson and Ms. Fayne:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), I want to thank you for the opportunity to provide the Internal Revenue Service with comments and suggestions regarding a proposed Practitioner's Reference Guide.

IRPAC was established in 1991 in response to 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.

With the decision by the Internal Revenue Service to discontinue the Package X, a decision we support, the Wage & Investment Subgroup feel there is a need for a Practitioner's Reference Guide (PRG). This PRG could be presented either on a CD-ROM or on the internet (accessible through the IRS web site).

A preliminary list of items to be included in the PRG was provided to Mr. Erickson. He informed the W&I Subgroup that the Service planned to issue a written survey to

practitioners at the six Nationwide Tax Forums this year. The results will be tabulated and shared with the W&I Subgroup.

Since the six Tax Forums were not completed in time to finish this project before the public meeting, we feel this should be carried over to the following year.

The IRPAC appreciates the opportunity to comment and make recommendations to the IRS concerning current publications, forms or procedures.

If you wish to discuss these comments further, please call Charles Egender CPA, W&I Subgroup, at 410-838-0330, or contact by email at charles.egender@verizon.net.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

TAX EXEMPT & GOVERNMENT ENTITIES SUBGROUP REPORT

BARRY C. FAISON
KATHERINE S. KINNICUTT
JANICE M. WEGESIN
PATRICIA A. MCCAULEY, SUBGROUP CHAIR

OCTOBER 27, 2005

INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE

TAX EXEMPT & GOVERNMENT ENTITIES
SUBGROUP REPORT

During the 2005 calendar year, the Tax Exempt and Government Entities Subgroup ("TE/GE Subgroup") worked with Internal Revenue Service ("IRS") representatives from the Tax Exempt & Government Entities ("TE/GE") Division of the IRS on a number of information reporting issues, most notably substantive and reporting issues relating to the advent of Internal Revenue Code section 402A designated Roth contributions to 401(k) and 403(b) plans.

The following TE/GE Subgroup projects are included in this section:

- **Letter:** (***Wegesin***) – Distribution and Reporting Issues Relating to Elective Deferrals Treated as Designated Roth Contributions under Internal Revenue Code ("Code") Section 402A

- **Letter:** (***Kinnicutt***) – Special Reporting and Withholding Requirements for Distributions Initiated by a Plan Administrator or IRA Custodian/Trustee

- **Letter:** (***McCauley***) – Tax Reporting Issues Raised by the Employee Plan Compliance Resolution System ("EPCRS")

Marjorie Hoffman, Senior Technician Reviewer, Office of Chief Counsel, TE/GE; Joyce Kahn, Manager, EP Voluntary Compliance; Roger Kuehnle, Tax Law Specialist, Guidance & Quality Review, TE/GE; Mark O'Donnell, Director, Customer Education Outreach, 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 IRS representatives, were instrumental in working with the TE/GE Subgroup on the issues noted above.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Steven T. Miller
Commissioner, TE/GE
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Distribution and Reporting Issues Relating to Elective Deferrals Treated as Designated Roth Contributions Under Internal Revenue Code ("Code") Section 402A

Dear Mr. Miller:

The Information Reporting Program Advisory Committee ("IRPAC") appreciates this opportunity to provide comments and recommendations relating to distribution of amounts attributable to designated Roth contributions to Code section 401(k) and 403(b) plans.

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 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.

Rules to amend Reg. Section 1.401(k)-1(f) were published in proposed form on March 2, 2005. The proposals address many of the issues raised in the IRPAC's letter to you dated October 1, 2004; however, further guidance, particularly with respect to rules relating to distributions, is needed now to ensure adequate recordkeeping systems, tax reporting systems and plan procedures can be developed in advance of the January 1, 2006, effective date of these rules.

RECOMMENDATIONS

The IRPAC submits the following recommendations regarding certain distribution and reporting issues that arise with the implementation of qualified Roth contribution programs beginning in 2006:

1. Sponsors of plans that accept designated Roth contributions must adopt, as a matter of plan design, plan provisions that set forth ordering rules with respect to the account sources for all types of plan withdrawals and distributions. The IRS should not set forth such ordering rules.

2. A new model Section 402(f) notice should be issued to take into account distributions of both pre-tax and designated Roth contributions.

3. Section 72 rules (applied separately to designated Roth accounts) should be applied to determine the taxable portion of any distribution from a designated Roth account that is not a qualified distribution except to the extent it consists of a distribution of

    a. excess deferrals described in Section 402(g)(2),

    b. excess contributions described in Section 401(k)(8),

    c. excess aggregate contributions described in Section 401(m)(8), or

    d. a corrective distribution under Section 415.

4. Section 72 rules should not apply to distributions from designated Roth accounts that are distributed as part of a hardship withdrawal that satisfies the rules of Reg. Section 1.401(k)-1(b)(d)(3)(ii). A hardship distribution from a designated Roth account should be deemed to consist first of a return of basis.

5. The rollover of a portion of an eligible rollover distribution from a designated Roth account that is not a qualified distribution should be deemed to consist first of the portion of the distribution that is earnings.

6. With regard to the five-taxable-year period described in Section 402A(d)(2)(B), the IRPAC recommends that:

    a. The five-taxable-year period begins on the earlier of the first day of the employee's taxable year for which the employee first made designated Roth contributions to the plan or, in the case of a rollover contribution from another designated Roth account, the first day of the employee's taxable year for which the employee first made designated Roth contributions to such other designated Roth account.

b. The five-taxable-year period is determined separately for each plan in which an employee participates, whether or not the plans are of unrelated employers.

c. The plan administrator of a plan accepting designated Roth contributions must be responsible for keeping track of the five-taxable-year period for each employee and the amount of designated Roth contributions made on behalf of such employee. If the plan accepts rollovers from other designated Roth accounts, the plan administrator should be able to rely on reasonable representations made by the plan administrator of the plan distributing the designated Roth account. Ideally, the representation would include information that is required to be reported on Form 1099-R.

d. The period that funds are in a plan participant's designated Roth account do not count towards the five-taxable-year period for determining qualified distributions from a Roth IRA.

7. An eligible rollover distribution from a designated Roth account is eligible for rollover to a Roth IRA even if the taxpayer is not otherwise eligible to open a Roth IRA.

8. Designated Roth account distributions that are rolled to a Roth IRA may be rolled over only to another Roth IRA.

9. Implementing uniform reporting requirements will strengthen the ability of plan administrators to assume responsibility for tracking the five-taxable-year period and the principal amount of designated Roth contributions in a designated Roth account. With regard to reporting distributions from designated Roth accounts on Form 1099-R, the IRPAC recommends that:

   a. Distributions from designated Roth accounts be reported on a separate Form 1099-R that is in addition to any Form 1099-R produced to report distributions of other money types from the plan. A separate Form 1099-R must be prepared in situations where all or part of the designated Roth account balance is directly rolled over to another designated Roth account or Roth IRA. This Form 1099-R would be in addition to any Form 1099-R produced to report distributions from the designated Roth account not directly rolled over to another designated Roth account or Roth IRA.

   b. A new box or line be created to report the first year that designated Roth contributions were made to the plan. This box or line would be completed only when the Form 1099-R is used to report a distribution from a designated Roth account.

c. Instructions for box 5 be modified. Currently, box 5 reflects the amount of an employee's after-tax contributions or insurance premiums that the employee may recover tax free. Box 5 of a Form 1099-R used to report a distribution from a designated Roth account should reflect the amount of Roth contributions (basis) being recovered.

d. Instructions for box 7 should be modified, as follows:

i. Modify the explanation for Code 7 so that the last line reads "Do not use Code 7 for a distribution from a Roth IRA or a designated Roth account."

ii. Add Code H - Direct rollover. This code would be used only for direct rollover of a distribution from a designated Roth account to a designated Roth account in another 403(b) or 401(k) plan or to a Roth IRA.

iii. IRPAC submits the following three alternative proposals for reporting in box 7:

A. Modify the descriptions of Codes J and Q to also reference designated Roth accounts; allow the use of codes 1, 2, 3 and 4 with Code J; and add a new check-off box to be checked off only for distributions from designated Roth accounts.

B. Modify the descriptions of Codes J, Q and T to also reference designated Roth accounts; rewrite the explanation for Code T to say, "Use Code T for a distribution from a designated Roth account if you know the 5-year holding period has not been met or, in the case of a distribution from a Roth IRA, you do not know if the 5-year holding period has been met but:"; and add a new check-off box to be checked off only for distributions from designated Roth accounts.

C. Add three new codes that would be used only for distributions from designated Roth accounts that would be substantially similar to current Codes J, Q and T. (This method would not require a new check-off box.)

9. With regard to an IRA custodian/trustee reporting the receipt of rollover distributions from designated Roth accounts on Form 5498, the IRPAC previously submitted the attached suggestions to the IRS.

Again, the members of IRPAC appreciate the opportunity to provide the Service these recommendations. If you have any questions about these issues, please contact Janice M. Wegesin at 847/963-1600.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

Enclosure

cc: Roger S. Kuehnle, Tax Law Specialist, Guidance & Quality Review, TE/GE
Mark F. O'Donnell, Director, Customer Education and Outreach, TE/GE
Cathy A. Vohs, Attorney, Office of the Division Counsel, Associate Chief Counsel, TE/GE

RECOMMENDATIONS FOR FORM 5498 TO ACCOMMODATE SECTION 402A EFFECTIVE 2006

Preface: In reviewing Form 5498 and accompanying instructions for purposes of determining what changes are necessary, if any, to accommodate the receipt of rollover contributions from plans containing Qualified Roth Contribution Programs (QRCPs) as described in section 402A(b) of the Code, we have concluded that no changes to the form itself are necessary and only very minor changes to the Instructions associated with the form need to be made.

Reason for no change: Currently, only rollover contributions from other Roth IRAs are reported in Box 2. The Service knows a Form 5498 is being prepared for a Roth IRA as distinct from a Traditional, SEP or Simple IRA by the check box marked in Box 7. (See recommendation below for the clarification of the Specific Instructions for this box.) We are proposing that distributions from QRCPs that are rolled over to a Roth IRA also be reported in Box 2.

This recommendation is premised on the assumption that the IRS has no need to accumulate data on rollovers of Designated Roth Contributions (DRCs), plus earnings from QRCPS. This recommendation is also premised on the assumption that plan administrators will be required to separately report distributions consisting of DRCs (plus earnings) on Forms 1099-R. The Form 1099-R information would enable the Service to adequately match the rollover information reported by the recipient Roth IRA trustees / custodians in Box #2 to the distribution information reported by plan administrators on Forms 1099-R.

Revisions to Form 5498: No revisions to Form 5498 are necessary.

Revision to the "Instructions to Participant": As noted above, only a minimal revision to the Participant Instructions is necessary as follows:

"**Box 2:"** First sentence is revised as follows: "Shows any rollover you made to any IRA in 2005 including any direct rollover to a Traditional or Roth IRA."

[Note: The last sentence in this paragraph makes reference to the completion of Form 8606 for certain non deductible contributions. This would need to be revised, pending the Service's decision with respect to the use of Form 8606, to track non qualified distributions issued from QRCPs; it could read something like the following:

"If you have ever made any non deductible contributions, including a rollover of after tax contributions, to a Traditional IRA or if you have ever rolled over any non qualified Roth distributions from a 401(k) or 403(b) plan to a Roth IRA, use Form 8606."**]**

Revision to the "Specific Instructions for Form 5498": As noted above, only a minimal revision to the Instructions is necessary as follows.

Page R-13: "**Box 7 Checkboxes"** First paragraph is revised for simplicity and clarification as follows:

Replace the two sentences to read: "Check the appropriate box."

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Steven T. Miller
Commissioner, TE/GE
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Re: Special Reporting and Withholding Requirements for Distributions Initiated by a Plan Administrator or IRA Custodian/Trustee

Dear Mr. Miller:

On behalf of the Information Reporting Program Advisory Committee ("IRPAC"), I am writing to you to offer recommendations regarding the federal income tax withholding and reporting requirements applicable to certain specialized distributions issued from employer sponsored retirement plans and/or IRAs, including Roth, SEP and SIMPLE IRAs. These include distributions resulting from the escheatment of assets held within a participant's plan or IRA account to a state's unclaimed property fund, the closure of a plan or IRA account due to a financial institution's inability to verify the identify of a customer in accordance with the requirements of the Customer Identification Program ("CIP") as described in section 326 of the USA Patriot Act and certain other necessary account closures. IRPAC thanks you for the opportunity to provide such recommendations.

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 wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges and universities, and state taxing agencies.

BACKGROUND

Escheatment: On September 30, 2004, the Department of Labor issued Field Assistance Bulletin No. 2004-02 ("Bulletin") in which it addressed the circumstances under which a plan administrator / fiduciary of a terminating defined contribution plan in which certain participants were considered missing could escheat plan assets attributable to such missing participants to the applicable state's unclaimed property fund. Pursuant to this Bulletin, any such escheatment would constitute a plan distribution. Similarly, various and differing state statutes require the escheatment of assets held in IRA accounts to the state's unclaimed property fund, most usually upon the expiration of a state specified dormancy period and the classification of the account as distributable, e.g., the account holder attains age 70 ½.

CIP Failure: Federal regulations enacted pursuant to section 326 of the USA Patriot Act require financial institutions to verify the identity of any person who seeks to open an account, including any type of IRA account, beginning on or after October 25, 2002. Under this section, a financial institution must obtain certain "documentary" or "non-documentary" verification of an account holder's identity either before an account is opened or within a reasonable time thereafter. Pursuant to this requirement, an IRA custodian / trustee would have to close the IRA and distribute the balance to the account holder if the CIP verification requirements could not be timely met. In a letter dated October 1, 2004, IRPAC addressed some of the distribution and reporting issues raised by account closures mandated by a CIP failure.

Custodian / Trustee Resignations: Under certain circumstances and upon timely notification to an IRA account holder, a custodian or trustee may choose to resign as custodian / trustee of an account holder's account without the necessity of appointing a successor custodian / trustee for such account. In these cases, if the account holder does not transfer the account to a different custodian / trustee, the custodian / trustee closes the account and, with or without the account holder's written consent, distributes the assets to the account holder.

RECOMMENDATIONS

Given the specialized distribution situations described above, IRPAC became concerned that plan fiduciaries and IRA trustees and custodians might lack sufficient awareness of the withholding and reporting obligations applicable to these types of distributions. The IRS agreed that the instructions to Forms 1099-R and 5498 should be revised at some point to address these special distribution situations. Pending the release of the revised instructions, IRPAC recommends that the Service issue "soft guidance" (in Question and Answer format) to address the withholding and reporting requirements applicable to such specialized distributions. To facilitate the issuance of such guidance, IRPAC has written a draft Question and Answer (Q&A) paper entitled "Special Reporting and Withholding Requirements for Distributions Initiated by a Plan Administrator or IRA Custodian/Trustee," which is attached for your review. It is hoped that the draft Q & A paper proves helpful.

Again, IRPAC appreciates the opportunity to provide comments and recommendations with regard to these reporting and withholding issues. Should you have any questions or need for additional information, please do not hesitate to call upon Kathy Kinnicutt at 727-567-2329.

Sincerely,

Jeffrey Adelstone
2005 IRPAC Chair

Enclosure
cc: Roger S. Kuehnle, Tax Law Specialist; Guidance and Quality Review
Mark F. O'Donnell, Director, Customer Education and Outreach, TE/GE
Cathy A. Vohs, Attorney, Office of the Division Counsel, Associate Chief Counsel, TE/GE

Special Reporting and Withholding Requirements for Distributions Initiated by a Plan Administrator or IRA Custodian/Trustee

Q-1. What income tax withholding rules apply when a qualified defined contribution plan transfers, or escheats, the balance of a missing participant account to a state's unclaimed property funds?

A-1. In its Field Assistance Bulletin No. 2004-02 (F AB 2004-02), the Department of Labor's Employee Benefits Security Administration responded to plan sponsor and practitioner concerns about the disposition of account balances for missing participants held in a terminated defined contribution plan. The agency concluded that a plan fiduciary could voluntarily decide to escheat missing participants' account balances under a state's unclaimed property statute in order to complete the plan termination process.

Federal income tax should be withheld from such escheated accounts by applying the rules that would have applied had the participant elected a distribution. For amounts that would be treated as eligible rollover distributions, the mandatory income tax withholding rules of IRC Section 3405(c) apply. For amounts that are not otherwise eligible for rollover, the withholding rules governing nonperiodic payments as described in IRC Section 3405(b) apply.

State income tax must be withheld based on the rules of the state to which the account is escheated.

Q-2. How should a distribution described in Q&A-1 be reported on Form 1099-R?

A-2. Form 1099-R must be filed by the plan administrator using the missing participant's last known address. The sum of the income taxes withheld and the amount transferred to a state's unclaimed property fund (i.e., the gross amount) is reported in Box 1. Other information on Form 1099-R should be completed as though the participant had elected a distribution.

Q-3. Is it permissible to impose 100% Federal income tax withholding on the accounts of missing participants in lieu of transferring the accounts to a state's unclaimed property fund?

A-3. No. As noted in FAB 2004-02, this option has been determined to violate ERISA's fiduciary requirements.

Q-4. What income tax withholding rules apply when an IRA custodian/trustee transfers, or escheats, the balance of a missing taxpayer's traditional, Roth, SEP or SIMPLE IRA account to a state's unclaimed property fund?

A-4. Federal income tax must be withheld from such escheated amounts by applying the rules described in IRC Section 3405 that would have applied had the taxpayer elected a distribution.

State income tax should be withheld based on the rules of the state to which the account is escheated.

Q-5. How should the distributions described in Q&A-4 be reported on Form 1099-R?

A-5. Form 1099-R must be filed by the IRA custodian/trustee using the missing taxpayer's last known address. The sum of the income taxes withheld and the amount transferred to a state's unclaimed property fund (i.e., the gross amount) is reported in Box 1. Other information on Form 1099-R should be completed as though the taxpayer had elected a distribution.

Q-6. What income tax withholding rules apply when an IRA custodian/trustee must close an IRA account due to a failure of the taxpayer to satisfy the Customer Identification Program requirements described in Section 326 of the USA Patriot Act?

A-6. If an IRA custodian/trustee closes a taxpayer's IRA due to Section 326 failure, federal income tax must be withheld from such amounts by applying the rules that would apply when an IRA account is revoked by a taxpayer within the 7-day revocation period specified in Reg. Section 1.408-6(d)(4)(ii). Whether the distribution is taxable or subject to federal income tax withholding, however, depends upon the type of account (traditional or Roth) and the character of the amounts deposited to open the account (i.e., regular, rollover, transfer, Roth IRA conversion, or employer SEP/SIMPLE contributions). To the extent all or any part of the distribution of the initial deposit is deemed to be taxable for federal income tax withholding purposes under IRC Section 3405(e), the rules governing withholding on nonperiodic payments apply.

State income tax should be withheld based on the rules of the state of the taxpayer's address of record.

Q-7. How should a distribution described in Q&A-6 be reported on Form 1099-R?

A-7. The Form 1099-R reporting requirements for amounts distributed by an IRA custodian/trustee due to a Section 326 failure are the same as those that apply when an IRA account is revoked by a taxpayer within the 7-day revocation period specified in Reg. Section 1.408-6(d)(4)(ii). See also Rev. Proc. 91-70, 1991-2 C.B. Form 1099-R must be filed by the IRA custodian/trustee using the taxpayer's address of record.

Q-8. What income tax withholding rules apply when reporting a distribution that occurs as the result of an IRA custodian/trustee resigning as custodian/trustee without appointment of a successor custodian/trustee?

A-8. Federal income tax must be withheld from the amount distributed by applying the rules described in IRC Section 3405 that would have applied had the taxpayer elected a distribution.

State income tax should be withheld based on the rules of the state of the taxpayer's address of record.

Q-9. How should a distribution described in Q&A-8 be reported on Form 1099-R?

A-9. The Form 1099-R reporting requirements for amounts distributed by an IRA custodian/trustee due to resignation of the custodian/trustee are the same as those that would apply had the taxpayer elected a distribution. Form 1099-R must be filed by the IRA custodian/trustee using the taxpayer's address of record.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. Steven T. Miller
Commissioner, TE/GE
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Tax Reporting Issues Raised by the Employee Plans Compliance Resolution System ("EPCRS").

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 with recommendations on issues for which guidance would be helpful in connection with the Internal Revenue Service Employee Plans Compliance Resolution System ("EPCRS").

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 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.

EPCRS, currently described in Revenue Procedure 2003-44, allows plan sponsors to correct technical and administrative problems with their plans in order to maintain the tax-favored status of their plans. The TE/GE sub-committee agreed that certain corrections made pursuant to EPCRS raise reporting issues. Examples include reporting to participants of overpayments not repaid to the plan and reporting of the distribution of ineligible rollover amounts received by a plan.

The TE/GE sub-committee initiated a discussion with Joyce Kahn, Manager of EP Voluntary Compliance. Ms. Kahn noted that she frequently receives questions at conferences about reporting issues related to corrections under EPCRS. She agreed that IRPAC should develop a list of reporting issues that arise in the context of EPCRS and develop recommended guidance for those issues.

The members of the IRPAC TE/GE sub-committee look forward to addressing EPCRS reporting issues with the IRS in 2006. If you have any questions, please call Patricia McCauley at 410-345-6685.

Sincerely,

Jeffrey Adelstone
Chair, IRPAC

cc: Joyce I. Kahn, Manager, EP Voluntary Compliance
Roger S. Kuehnle, Tax Law Specialist, Guidance & Quality Review, TE/GE
Mark F. O'Donnell, Director, Customer Education and Outreach, TE/GE
Cathy A. Vohs, Attorney, Office of the Division Counsel, Associate Chief Counsel, TE/GE

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE

SMALL BUSINESS/SELF-EMPLOYED SUBGROUP REPORT

MARTHA BELL
MARIANNE COUCH
VIRGIL A. JULIAN
RACHEL J. PALIOTTI

OCTOBER 27, 2005

INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE

SMALL BUSINESS/SELF-EMPLOYED
SUBGROUP REPORT

The SB/SE Subgroup addressed a number of information reporting issues during 2005. The committee was very productive and covered the following issues:

- **Letter**: ***(Julian)*** Internet auction sales are being studied for tax compliance purposes. This is an important reporting issue that needs to be carried to 2006.

- **Executive Summary:** ***(Paliotti)*** TIN matching registration is available to entities required to file Forms W-2, 1098, 1099 to allow those entities access to electronic means of matching and verifying taxpayer identification numbers. There has been resistance from the principles of the filing community to registering because of personal data required.

- **Executive Summary:** ***(Couch)*** The issuance of ITINs for use to gain access to treaty treatment by taxpayers is being studied to determine if current methods are efficient for both the Service and the taxpayers. Suggestions were made to make the application process more streamlined and still meet the requirements of Code.

- **Letter:** ***(Bell)*** The compliance level of filing the Report of Foreign Bank and Financial Accounts form, commonly called the FBAR or Form TD F 90-22.1, has been reviewed. Because of the different filing criteria, present filing levels appear to be lower than expected. Recent changes in the law require additional filings and add penalties at a higher level. This is an important issue that needs to be carried to 2006.

The Subgroup would like to thank all of the Internal Revenue Service personnel who gave up a fair amount of their regular staff responsibilities to work with our SB/SE subgroup. We found them to be highly professional and responsive to our requests for information.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Mr. John Buchanan
Program Manager For
Electronic Compliance
Internal Revenue Service
4050 Alpha Rd.
Dallas, TX 75244

Re: Internet Auction Sales Initiative

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 about internet sales, particularly auction sites.

IRPAC was established in 1991 in response to an administrative recommendation to the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the Internal Revenue Service 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.

With the rapid growth of internet use for both personal and business needs, concern was expressed about the approach taken to report such transactions. A traditional approach to internet sales by formally organized business entities is expected; it is another order entry method.

The expansive growth of the on-line auction sites, however, offers another concern. The volume of transactions indicates there may be an opportunity to add tax revenues as a result of those transactions.

If the on-line auction (or any other auction) is a means of converting unneeded, unused personal property to cash, there would be no reason to list such sales on the tax return. Personal property sold at a loss is not deductible (l65(c)).
If the on-line auction (or any other auction) is a means of selling collectibles, those transactions should be listed on the tax return. Taxpayer volume and intent would

determine whether the transactions were investments (reportable on Schedule D), or a trade or business (reportable on Schedule C).

If the on-line auction (or any other auction) notes a seller who has $l,000- $l,500 worth of transactions a month, there is concern that there is a trade or business which may not be reported on the tax return.

Code Section 6045 states: *Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.*

However, a review of the service performed by these organizations indicates that this kind of service does not qualify as a broker nor is it required to report any of its activity under the Internal Revenue Code.

A further review of the Internal Revenue Code as well as the Patriot Act shows that neither of these statutes gives the Internal Revenue Service any power to require any of the Internet Auction organizations such as E-bay to report any of their activity to the Internal Revenue Service.

It appears that the only way to require reporting by these organizations is for The Congress to enact new legislation directed at reporting by this type of activity.

With this new method of earning income, some taxpayers would be unaware of the requirement to report these types of sales. Receipt of an unexpected year-end form could also result in taxpayer confusion. Therefore, taxpayer education is also suggested to alleviate these problems.

IRPAC realizes the difficulty in providing guidance to taxpayers regarding auction transactions. IRPAC welcomes the opportunity to comment and make recommendations in response to any enhancements proposed by the IRS to its current publications, forms or procedures.

If you wish to discuss these comments further, please call Virgil Julian at (816) 836-1942.

Sincerely,

Jeff Adelstone

Jeffrey Adelstone
2005 IRPAC Chair

EXECUTIVE SUMMARY

TITLE OF PAPER: TIN Matching Program

ISSUE STATEMENT: This paper addresses the registration/application process and recommendations on encouraging Form 1099 filers to register and use the TIN Matching program.

REMEDIES SOUGHT: Educating principals and users in becoming more comfortable with the registration process to increase the number of companies using the TIN matching program.

IRPAC TEAM: Martha Bell, Rachel Paliotti, Virgil Julian, and Marianne Couch

IRS PARTICIPANTS: Tom Parisi and Pat Alford

BACKGROUND: Those who have used the TIN Matching Program have found it very helpful in avoiding TIN errors and reducing the number of backup withholding notices required by IRC Section 3406(a)(1)(B). However, one of the main drawbacks to the TIN Matching is that the registration/application process requires a principal who has the authority to legally bind the firm to apply on behalf of the firm for TIN Matching access. Some companies have found it difficult to get a "Principal" to complete the application process since they fear releasing their personal information (social security number, date of birth, adjusted gross income from their personal income tax return) over the internet. In addition, **all users** must register with the IRS and provide personal information. This has been very discouraging because some employees who are responsible for information reported on Form 1099 do not want to provide personal information to the IRS on behalf of the firm.

SUMMARY OF RECOMMENDATIONS: Educating principals and users in becoming more comfortable with the registration process with the use of a brochure that can be mailed with the B-notices and penalty notices issued by the IRS. Principals and users need to know that the information provided is not shared with their employers, the IRS does not store any additional tax data, the IRS is only asking for information they already have, and this does not increase their chance of an audit.

TAXPAYER/INDUSTRIES AFFECTED:	All Filers of Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, and 1099-PART.
BENEFIT TO TAXPAYERS:	Better understanding of the sign-up process. Decrease of TIN errors. Reduce the number of backup withholding notices required by IRC Section 3406(a)(1)(B).
BENEFIT TO IRS:	Increase users of the TIN Matching program. Decrease the number of TIN errors received by the IRS.

DISCUSSION

Background

The Interactive and Bulk Taxpayer Identification Number (TIN) Matching Program was established by authority of Revenue Procedure 2003-09 to allow the on-line matching of taxpayer identifying information as provided by payers of income reported on Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, and 1099-PART. Prior to filing an information return, a program participant may compare the TIN furnished by the payee with the name/TIN combination contained in the Internal Revenue Service database that is maintained for the Program. The IRS will inform the payer whether or not the names/TIN combination furnished by the payee matches a name/TIN combination in the database.

Those who have used the TIN Matching Program have found it very helpful in avoiding TIN errors and reducing the number of backup withholding notices required by IRC Section 3406(a)(1)(B). However, one of the main drawbacks to the TIN Matching is that the registration/application process requires a principal, (such as a VP, Secretary or a Treasurer) who has the authority to legally bind the firm to apply on behalf of the firm for TIN Matching access. Some companies have found it difficult to get a "Principal" to complete the application process since they fear releasing their personal information (social security number, date of birth, adjusted gross income from their personal income tax return) over the internet. In addition, **all users** must register with the IRS and provide personal information. This has been very discouraging because some employees who are responsible for information reported on Form 1099 do not want to provide personal information to the IRS on behalf of the firm.

Recommendations

Educating principals and users in becoming more comfortable with the registration process may be the key to solving this problem. Principals and users need to know that the information provided is not shared with their employers, the IRS does not store any additional tax data, the IRS is only asking for information they already have, and this does not increase their chance of an audit. A brochure has been developed to address the concerns of those reluctant to sign up for the program. This brochure can be mailed with the B-notices and penalty notices issued by the IRS. The goal is to ultimately increase the number of companies using the TIN matching program.

Affected Taxpayers

All Filers of Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, and 1099-PART.

Benefit to Taxpayers

With a better understanding of the sign-up process a taxpayer will be encouraged to sign up for the TIN Matching Program. In the long run, using this program will avoid TIN errors and reduce the number of backup withholding notices required by IRC Section 3406(a)(1)(B).

Benefit to IRS

The proposed recommendation will increase the use of the TIN Matching program. In the long run this will decrease the number of TIN errors received by the IRS.

EXECUTIVE SUMMARY

TITLE OF PAPER: ITIN Application Issues

ISSUE STATEMENT: This paper addresses the application process for an ITIN (individual taxpayer identification number) and recommends changes to that process to increase efficiency and reduce taxpayer burden.

REMEDIES SOUGHT: Revision and streamlining of ITIN application process:

- Elimination of requirement to obtain rejection letter from the SSA to obtain ITIN in certain circumstances;

IRPAC TEAM: Martha Bell, Rachel Paliotti, Virgil Julian, and Marianne Couch

IRS PARTICIPANTS: Francine Prince, Lowell Hancock, Maxine Siegel, Charlotte Kieliszek

BACKGROUND: Nonresident aliens with a requirement to file a US income tax return, with a claim for a tax treaty benefit, or to deposit employment and other taxes, must obtain a US taxpayer identification number. Since most of these individuals will not qualify to obtain either an SSN or an EIN, they must apply for and obtain an individual taxpayer identification number (ITIN). Individuals apply for ITINs using the Form W-7, which is processed at the Internal Revenue Service Philadelphia Processing Center. Many circumstances exist under which individuals encounter significant difficulty in obtaining an ITIN under the current procedures. A change to and streamlining of some of these procedures would increase the accuracy and timeliness of payments, withholding, returns filed, and taxes remitted.

SUMMARY OF RECOMMENDATIONS: IRPAC respectfully suggests that, under certain circumstances, the IRS:

- permit persons who entered the United States on tourist- or business-visitor visas, and who are performing services outside of an employment relationship for certain research and higher-education institutions, as authorized under the

AICWA, be permitted to apply for an ITIN without first having to obtain a rejection letter from the Social Security Administration. In lieu of the rejection letter from the Social Security Administration, IRPAC asks the IRS to accept from these institutions a letter validating that the payee is a non-resident alien individual present as a visitor under the requirements of the ACWIA who is required to obtain an ITIN to claim a treaty benefit.

- Permit a Designated School Official, usually the foreign-student advisor, to establish that a student is not authorized to work in the United States, cannot apply for an SSN, and should be permitted to obtain an ITIN without first providing a rejection letter from the SSA.

TAXPAYER/INDUSTRIES AFFECTED:

All nonresident aliens with US source income who do not qualify for a social security number (SSN); withholding agents paying US source income to nonresident aliens who are required to obtain TINs from their payees in order to provide income tax treaty benefits.

BENEFITS TO TAXPAYERS:

Streamlines the ITIN application process, ensuring that taxpayers who require ITINs receive them in order to file the appropriate income tax returns and remit the appropriate amount of taxes.

BENEFITS TO INTERNAL REVENUE SERVICE:

Receives more accurate returns and the appropriate amount of tax withheld at source or timely deposited.

DISCUSSION

Background

Pursuant to I.R.C. §1441, et seq., US source income paid to a non-resident alien is reportable on a Form 1042-S and subject to 30% withholding. Nonresident aliens with a requirement to file a US income tax return, with a claim for a tax treaty benefit, or to deposit employment and other taxes must obtain a US taxpayer identification number. Since most of these individuals will not qualify to obtain either an SSN or an EIN, they must apply for and obtain an individual taxpayer identification number (ITIN).[1]

[1] No TIN is required to apply the benefits of an income tax treaty to income from publicly traded securities, and these payments are not included within the scope of this paper.

The Form W-7 lists the circumstances under which the IRS will issue an ITIN: to file an income tax return; to be listed as a spouse or dependent on another's income tax return; if paying interest on a home mortgage loan subject to third-party reporting; if disposing of a real property interest the proceeds of which are subject to withholding; or to claim a treaty benefit. For all purposes, the individual must attach to the Form W-7 certain specific documentation as outlined in the form's instructions.

Issue 1
Nonresident Aliens Present in the US as Tourist or Business Visitors (Nonimmigrant Status and Without Employment Authorization)

Pursuant to I.R.C. §1441, et seq., US source income paid to a nonresident alien is reportable on a Form 1042-S and subject to 30% withholding. The amount of withholding may be reduced or eliminated altogether if the payee and payment qualify for application of the benefits of an income tax treaty. However, in order successfully to claim the tax treaty benefits, a payee must, subject to certain limited exceptions, provide a US taxpayer identification number ("TIN"); either an employer identification number ("EIN"), a social security number ("SSN"), or an individual taxpayer identification number ("ITIN"). The IRS assigns ITINs to individuals who require them for specific purposes, outlined in the Form W-7, "Application for IRS Individual Taxpayer Identification Number," who do not otherwise, in general, qualify to obtain SSNs.

If the individual is applying for the application of a treaty benefit to other income (e.g., wages, salary, compensation), he must attach to the Form W-7 both documentation from the Social Security Administration ("SSA") denying his application for an SSN, as well as the Form 8233, "Exception from Withholding on Compensation for Independent (and Certain Dependant) Personal Services of a Nonresident Alien Individual." The Form 8233 requires a US TIN.

Persons who enter the United States on tourist- or business-visitor visas are generally ineligible for employment, including self-employment, except in those cases authorized by the American Competitiveness and Worksite Improvement Act (ACWIA), passed by Congress in 1998 and making it permissible for certain research and higher education institutions, subject to time and activity restrictions, to pay foreign visitors[2] for the

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[2] Foreign visitors are temporary aliens who fall into six categories:

1. Nonimmigrants who enter the United States with B-1/B-2 visas and are issued white Forms I-94 endorsed B-1 as ***business visitors***
2. Nonimmigrants who enter the United States with B-1/B-2 visas and are issued white Forms I-94 endorsed B-1 as ***visitors for pleasure (tourists)****;*
3. Nonimmigrants who enter the United States under the *Visa Waiver Program* and are issued green Forms I-94 endorsed ***WB*** (Waiver Business);
4. Nonimmigrants who enter the United States under the *Visa Waiver Program* and are issued green Forms I-94 endorsed ***WT*** (Waiver Tourist);
5. Visa-exempt Canadian citizens who are not issued Forms I-94 upon admission to the United States as visitors;

performance of usual academic activities (e.g., speeches, lectures, etc.) without the necessity of "sponsoring" these individuals for employment. These individuals will be present in the United States lawfully to perform services but, because they are doing so outside of an employment relationship, they will not qualify to obtain SSNs. Instead, in order to apply and qualify for any available treaty benefits, they will need to obtain an ITIN.

However, the ITIN application process requires individuals applying for an ITIN in order to qualify for the application of treaty benefits to first apply to and be rejected by the SSA for an SSN, and then attach this "rejection letter" to the Form W-7. However, persons present in tourist- or business-visitor status are not authorized for employment; accordingly, they will not qualify to obtain SSNs from the Social Security Administration. In most cases, individuals present in the United States performing services under the authority of the ACWIA will, of necessity, be present for only a short period of time. They will be present in the US for a number of days insufficient to obtain a rejection letter from the Social Security Administration an then complete the ITIN application process. Time delays for obtaining an ITIN ensue even if, as allowed, the individual applies for an ITIN through an acceptance agent.

Accordingly, most payors are faced with the requirement to withhold 30% from any payment made to these individuals, primarily because of the length of time it takes to apply first to the SSA for an SSN, obtain the rejection letter, and then complete the ITIN application process, even though it is known at the outset that these individuals will not qualify for SSNs but would ultimately qualify for treaty benefits, such that withholding would not be required.

Recommendation
IRPAC respectfully suggests that the IRS permit persons who entered the United States on tourist- or business-visitor visas, and who are performing services outside of an employment relationship for certain research and higher-education institutions, as authorized under the AICWA, be permitted to apply for an ITIN without first having to obtain a rejection letter from the Social Security Administration. In lieu of the rejection letter from the Social Security Administration, IRPAC asks the IRS to accept from these institutions a letter validating that the payee is a non-resident alien individual present as a visitor under the requirements of the ACWIA who is required to obtain an ITIN to claim a treaty benefit.

Affected Taxpayers
Nonresident aliens with taxable US source income and US withholding agents.

Benefits to Taxpayers
These proposed changes would reduce taxpayer burden in obtaining an ITIN, paying the appropriate amount of tax and/or withholding from the payment the appropriate amount of tax.

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6. Mexican citizens with Border Crossing Cards that allow them to ***visit*** the United States for up to 72 hours, within 25 miles of the US border.

Benefits to the IRS
The IRS will receive more accurate Forms 1042-S, will obtain more easily the necessary amount of withholding for US source income payments, and will limit the need to process a number of Forms 1040NR seeking only refunds.

Issue 2
Foreign Students Without Work Authorization
Foreign students who arrive in the United States on F, J, or M visas and who are without employment authorization are not permitted to apply for SSNs; however, these students might possess or obtain US source income that is taxable within the United States. These students should not be required first to apply for an SSN and be rejected by the SSA before the IRS will issue an ITIN, since they realize, at the outset, that they will not qualify for an SSN.

Recommendation
IRPAC understands that this requirement was initially developed because the IRS could not tell, on the basis of F, J or M immigration status alone, whether the student was authorized for employment within the United States. However, rather than require that the student obtain a rejection letter from the SSA, IRPAC recommends that the IRS accept a letter from the Designated School Official, usually the foreign-student advisor, establishing that the student is not authorized to work in the United States, cannot apply for an SSN, and should be permitted to obtain an ITIN.

Affected Taxpayers
Nonresident alien students with taxable US source income but without work authorization.

Benefits to Taxpayers
Streamlines process for obtaining ITIN to file US income tax return.

Benefits to the IRS
Taxpayer obtains ITIN more quickly and easily, thereby making the filing of a US tax return more likely and efficient.

INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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

October 27, 2005

Ms Elizabeth B Witzgall
Senior Bank Secrecy Analyst
National Headquarters SBSE
1111 Constitution Ave
Washington, DC 20224

Re: Report of Foreign Bank and Financial Accounts

Dear Ms Witzgall:

On behalf of the Information Reporting Program Advisory Committee (IRPAC), this letter discusses the findings of the SB/SE Subgroup concerning the Report of Foreign Bank and Financial Accounts form.

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 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 association, colleges and universities, and state taxing authorities.

The Report of Foreign Bank and Financial Accounts form, commonly called the FBAR or Form TD F 90-22.1, is used by US residents or people in or doing business in the United States to report the existence of a financial account located in a foreign country with a value exceeding $10,000. Present filing levels suggest that the current form is not being properly utilized. The number of forms filed has increased in the last year, but not to the extent thought to be near full compliance. In 2005 there were 253,632 FBARS filed through August 18; a Treasury Financial Crimes Study estimated that as many as one million may be required to file. That requirement is a rough estimate because one FBAR filing can cover many accounts and multiple FBARS can be filed for just one account.

The FBAR has been required since the passage of the Currency and Foreign Transaction Reporting Act as a part of the Bank Secrecy Act in 1970. The Bank

Secrecy Act is not a tax statute and the FBAR is not a tax form. The FBAR filing requirement has been codified in Title 32 of the US Code, not in Title 26, the tax code.

There is a shroud of secrecy around the FBAR. Under the Bank Secrecy Act there is a prohibition of disclosing FBAR filings even under a Freedom of Information Act request. Until April, 2003 Treasury was responsible for FBAR enforcement. That authority has now been delegated to Internal Revenue. The Patriot Act calls for an annual report on FBARs because of a concern that terrorists are using these foreign bank accounts to fund activities in the US.

Since there may be a filing requirement for the foreign accounts even if there is no taxable income produced, identifying filers who are required to complete the FBAR is difficult. Present disclosure law, Section 6103, prohibits disclosure of return information other than taxes. Internal Revenue will allow FBAR filing information be provided to the filer. Because the FBAR is not a tax form, it does not appear on the tax transcript. The IRS employee rendering the information must access the Currency and Banking Retrieval System. This data base is separate from the IMF and BMF that is regularly used for taxpayer data.

The FBAR has different criteria than a tax return although mention is made of it (or the more formal T D F 90-22.1 form) in most tax software and on IRS tax forms (see the bottom of 1040 Schedule B or within the 1120 return).

- The FBAR is not filed with the tax return. It is filed in the Detroit Computing Center not an IRS processing campus.

- The FBAR cannot currently be filed electronically.

- The due date of the return is June 30 of the year following the calendar year to be reported. There is no statutory provision for an extension of filing the FBAR. Historically, extensions have not been granted administratively.

- Form 2848, the power of attorney used in most IRS cases does not extend to the FBAR. A separate power of attorney valid under state law must be used.

- The statute of limitations on penalty assessment runs six years from June 30th of the year following the year for which the FBAR filing was required.

Often tax professionals are not familiar with the FBAR or its filing requirements. Prior lack of enforcement has taken a toll in this arena of compliance assistance.

FBAR filers may be other than persons having a financial interest in a foreign financial account. A filer may be someone who has signature or other authority over the foreign account.

- A corporate officer having signature authority over the foreign financial account of his corporation is required to file an FBAR. (There are exceptions to this rule if the corporation is large, *ie* more than $10 million in assets and more than 500 shareholders.)

- A US corporation that has a more than 50 percent owned foreign subsidiary and the subsidiary has foreign financial accounts. The US corporation must file an FBAR.

- Indirect owners of accounts also have a responsibility for filing an FBAR. This would include accounts for which there is a foreign agent, nominee or attorney. It would include a bank account of a foreign corporation where the US person was a more than 50 percent owner. It would include a bank account of a foreign partnership where the US person owned more than 50 percent of the profits. It would include a foreign trust where the US person either has a present beneficial interest of more than 50 percent of the assets or from which the US person received more than 50 percent of the income.

The American Jobs Creation Act of 2004 changed FBAR penalties.

Under the new law any US person not filing when required faces a penalty of $10,000. A penalty abatement may be granted if a reasonable cause can be established. Even if there is reasonable cause to abate the penalty, the penalty will stand if the balance in the account is not properly reported.

If the failure to file was a willful violation, the new law raised the potential penalty to the greater of $100,000 or 50 percent of the balance of the account at the time of violation.

This is a significant change to the penalty structure giving motivation to timely filing the FBAR.

The IRPAC committee endorses the expansion of the FBAR form and the instructions. The current form has the potential to co-mingle accounts and various ownership properties. The instructions are somewhat contradictory.

The current draft form is longer and perhaps more daunting to the taxpayer, but has a more logical progression to the types of accounts and the types of holders of those accounts. Unfortunately, the mailing address for the form which was prominently displayed on the current form is not on the form itself; rather it is listed in the separate instructions. Surely when an identified problem is getting the return to the proper site, putting that address on the form would be appropriate.

The instructions have been expanded to be more descriptive of the requirements of filing. Definitions have been refined to better describe qualifying attributes of filers

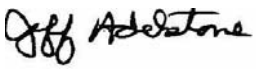
and their situations. Specific prohibitions about filing the form with the income tax return have been added. Line item descriptors have been added and expanded.

The IRPAC committee endorses an education campaign to the international financial services community and tax professionals as well. Lack of enforcement under prior law will have to be countered with making the US persons responsible for filing the FBAR aware of that responsibility. Particular emphasis should be placed on the new, higher penalty structure.

Such education programs can take a multitude of forms from enclosing a stuffer with any broad mailing of forms, penalty notices or information-seeking correspondence to a headliner on irs.gov. Mention may also be made in the tax return form instructions as to the FBAR filing requirements. Educating the tax professional community through inclusion as a topic at the Nationwide Tax Forums and other stakeholder contacts is another venue to be pursued. Those contacts may take the form of both physical and virtual sources (see Publication 4261 available in Spanish, Mandarin and Korean languages and the stakeholders' website headliners.)

If you have any questions or need additional information regarding IRPAC'S comments, please contact Martha Bell at (863) 647-3112.

Sincerely,



Jeffrey Adelstone
2005 IRPAC Chair

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OCTOBER 27, 2005

Information Reporting Program Advisory Committee
2005 Member Biographies

Jeffrey A. Adelstone Mr. Adelstone is President and CEO of Adelstone Financial Services, Inc., a financial services firm established in 1969, specializing in income tax preparation, financial planning, management advisory services for small business, and accounting in Tucson, AZ. He is a Past President of the Arizona Society of Practicing Accountants and the Arizona Society of Enrolled Agents, and holds a BS and an M.Ed from the University of Arizona. Routinely preparing in excess of 1,000 income tax returns annually, Mr. Adelstone has prepared well in excess of 30,000 income tax returns during his professional career. **(Chairman)**

Martha Bell Ms. Bell has been preparing taxes for over twenty-four years and is the owner and operator of TaxAdvantage of Lakeland, LLC in Lakeland, FL. Prior to owning her own business she worked for an accountant/computer company. She was the controller for a managing general insurance agency where she earned her enrolled agent's credentials. She currently sits on the Advisory Committee of the Florida Metropolitan University, Lakeland campus. She was the former President of the Florida Association of Accounting and Tax Professionals and continues to serve in a variety of capacities. She currently serves as the Florida State Director for the National Society of Accountants. Ms. Bell holds a BS in Education from the University of Akron, a Masters in Education from Kent State University and a BA in Business Administration (Accounting) from the University of Florida. In addition, she is an Accredited Business Accountant, Accredited Business Advisor, Florida mortgage broker, Series 6, and a US Tax Court Practitioner. **(SB/SE Subgroup Chair)**

Dave Corthell Mr. Corthell is Vice President and Corporate IRS Compliance Manager of SunTrust Banks, Inc. in Orlando, Florida. Mr. Corthell has over 20 years experience with IRS Information Reporting programs. He manages all programs associated with IRS Information Reporting and IRAs for affiliates and subsidiaries of SunTrust Banks Inc. His responsibilities include IRS and IRA regulatory analysis, coordination of all information reporting projects, development of related policies and procedures, filing of all 945s, 941s for non qualified plans, state reporting, managing all daily IRS compliance activities and the SunTrust IRS toll free help line. Mr. Corthell is a member of the American Bankers Association ("ABA") and The IRS Information Reporting Roundtable. He attended Ohio State University and Terra Community College and holds a degree in Accounting and Computer Science Technology. **(LMSB Subgroup)**

Marianne Couch Ms. Couch is the Executive Director for the National Association of Form 1099 Filers Inc. and the Director of Research for Balance Consulting, Inc. in Ann Arbor, MI. She has worked for several years translating complex sections of the US tax code and specializes in addressing tax regulations of international and Form 1099 reportable payments. Ms. Couch conducts annual corporate tax-training seminars instructing tax professionals in complying with IRS regulations. She received her Juris Doctor, cum laude from Michigan State University in 1995. **(SBSE Subgroup)**

Charles F. Egender Mr. Egender is the owner of the Charles F. Egender, CPA, PA in Bel Air, MD, which specializes in tax preparation, tax advisor and business consulting. In 1991 he retired from the Army after 23 years of service as a Sergeant Major. He has been preparing tax returns for 24 years and has been electronically filing since 1991. Mr. Egender has been a very active member of the Maryland Society of Accountants (MSA), serving on the Education, Legislative Affairs and Tax Committees. He has chaired the Policy and Procedures Committee and is currently chair of the Tax Affairs Committee. From July 2003 to June 2004 he was president of MSA. He is also a member of the National Society of Accountants and the National Association of Tax Professionals. In 2002 and 2004 he was selected as an Exemplary ERO. **(W&I Subgroup)**

Barry C. Faison Mr. Faison is the Chief Financial Officer for the Virginia Retirement System in Richmond, VA. He has had more than 24 years experience in directing a large fiscal staff which includes public pension, investments and benefits accounting and the related GAAP reporting and disclosure requirements and GASB Standards. Mr. Faison is a CPA and holds a CGFM certification from the Association of Government Accountants. He is currently the President of the National Conference of State Social Security Administrators. **(TEGE Subgroup)**

Robert J. Foley Mr. Foley is Director of Product Tax at the State Street Bank and Trust Company in Boston, MA. He is a lawyer and has spent more than 7 years supporting tax operations, new business installations and RFPs at State Street. He previously worked at the IRS Office of Chief Counsel and a law firm. Mr. Foley taught a tax class at Boston University School of Law for five years. He is a member of the Boston Bar Association and its Tax Section and is active on their International Tax committee. He is also a member of the Securities Industry Association (SIA) Committee on Tax Compliance and Administration. Mr. Foley holds degrees from Boston University, Suffolk University Law School and Boston University School of Law (L.L.M. in Taxation). **(LMSB Subgroup)**

Debra Heikkinen Ms. Heikkinen is a Tax Senior Manager at Deloitte & Touche, LLP in Hartford, CT, in the Tax Controversy Services practice. She has fifteen years of international, domestic, and state tax reporting experience, focusing on executive compensation, employment taxes, tax information

reporting and tax controversy. She has worked with large and medium-sized clients in a variety of industries. She also serves as President of the National Association of Tax Reporting and Payroll Management (NATRPM); is a member of the American Bar Association, Section of Taxation, and Employment Taxes Committee. Ms. Heikkinen holds an A.B. in Government and Economics from Smith College, a J.D. from Duquesne University School of Law, and an LL.M. in Tax from Boston University School of Law. **(LMSB Subgroup Chair)**

Paul Heller Mr. Heller is the Financial Director, Global Tax Planning, Compliance and Escheatment Manager at JP Morgan Chase in New York, NY. He has had more than 27 years experience as a financial director, Vice President and Tax Manager and Tax Analyst. He received his Juras Doctor from Case Western Reserve University School of Law in 1976. He is a member of the NY Chapter of Tax Executives Institute (Board Member, Chairman of LMSB Financial Services Subcommittee, Past President of Chapter); International Fiscal Association; and the American Bar Association; Committee of Banking Institutions on Taxation. **(LMSB Subgroup)**

Virgil A. Julian Mr. Julian is the owner of the Julian and Company CPA PC in Independence, MO. He is a CPA and has been preparing federal income tax returns for over 62 years since 1942, the first year Americans had to file voluntary income tax returns. In addition to being in practice he has been in the following businesses: Air Charter Service; Motion Picture Exhibitor, (15 theatres); started, built and sold a cable television company, a redevelopment company, many specialty stores, specialty goods, glassware, coffee, restaurants, ice cream parlors, and others. He presently has a flower and gift shop. Mr. Julian is a member of the Missouri Society of CPA's and has been on the Management of Accounting Practice Committee for 32 years. **(SBSE Subgroup)**

Katherine S. Kinnicutt Ms. Kinnicutt is the Manager of the IRA and Qualified Plan Technical Operations and Compliance area of the Retirement Plan Services Department of Raymond James & Associates in St. Petersburg, FL. She has had more than 34 years experience as a manager of the IRA and qualified plan technical operations and compliance area of Retirement Plans, as an actuarial assistant and a plan administrator. Ms. Kinnicutt earned a Certified Employee Business Specialist (CEBS) designation from the International Foundation of Certified Employee Benefits and the Warton School in 1993. **(TEGE Subgroup)**

Patricia McCauley Ms. McCauley is an Associate Legal Counsel of T. Rowe Price in Baltimore, MD specializing in retirement plan matters. Ms. McCauley provides research and analysis for retirement savings products (e.g., defined contributions plans, Traditional, Roth, SEP and SIMPLE IRAs,

and 403(b) plans and custodian accounts) that T. Rowe Price offers to plan sponsors and individual investors. Ms. McCauley also is involved in issues relating to information and tax reporting for all T. Rowe Price retirement savings products. **(TEGE Subgroup Chair)**

Steve Neiss

Mr. Neiss has been active in the securities industry for more than thirty-two years and is currently employed by ADP Investor Communication Services, a division of Automatic Data Processing's Brokerage Services Group, as a Vice President of Tax Information Reporting. In 1983, he was President of the Securities Industry Association (SIA) Dividend Division and Chaired the SIA Tax Compliance and Administration Committee in 1985-1986 and 1997-1999. He is licensed with the National Association of Securities Dealers as a securities salesman and principal. Mr. Neiss holds a BA from The City University of New York. (LMSB Subgroup)

Rachel Paliotti

Ms. Paliotti is Corporate Tax Manager for Blue Cross & Blue Shield of Rhode Island. Ms. Paliotti is responsible for all federal, state and local tax planning and compliance matters as well as all Form 1099 information reporting matters. Ms. Paliotti is Co-Chairperson of the Blue Cross & Blue Shield Association Information Reporting Task Force. The mission of this task force is to recommend appropriate policy actions and strategies in the reporting, processing, and filling of information returns. Ms. Paliotti is a Certified Public Accountant and is a member of the Rhode Island Society of Certified Public Accountants and The American Institute of Certified Public Accountants. Ms. Paliotti holds both a MBA and BS from Bryant College. **(SBSE Subgroup)**

Patricia A. Rhodes

Ms. Rhodes is President and CEO of Pat Rhodes Accounting, Inc. A firm that provides tax preparation services for individuals (poverty level to six figure incomes) and businesses (sole proprietors and small corporations, both C & S). Her business provides other services such as write-up, payroll, tax representation, small business start-up and tax planning. Annually, she personally prepares over a thousand tax returns. She is the President and CEO of TaxTime Software Group, Inc., est. 1998. Ms Rhodes holds an advisory position on the Executive Partner Council of Orrtax Software Solutions, Seattle, WA. She is a member of the National Association of Tax Professionals, National Association of Enrolled Agents, and other professional organizations. Ms. Rhodes holds a B.S. from Jacksonville University (1973) and is a retired teacher. **(W&I Subgroup)**

Regina D. Tarpley

Ms. Tarpley is an Enrolled Agent and has been a tax preparer at T&M Tax Service dba Jackson Hewitt Tax Service in Blue Ridge, GA, since 1997. She prepares individual, business and corporate tax returns. She has also had experience as an administrative manager, Para-professional

and a Superior Court clerk. Ms. Tarpley graduated Summa Cum Laude with a Master of Business Administration from Brenau University in 1994. **(W&I Sub-group)**

Janice M. Wegesin Ms. Wegesin is president of the JMW Consulting, Inc. in Palatine, IL. She has 25 years experience in retirement plan design and administration and was formerly with the Chicago ABC practice of Deloitte & Touche. Ms. Wegesin is a Certified Pension Consultant, a Qualified Pension Administrator and an Enrolled Agent. She is a member of the American Society of Pension and Actuaries (ASPA), the National Institute of Pension Administrators (NIPA) and member (Emeritus) Great Lakes TE/GE Council. Ms. Wegesin received the ASPA Educator's Award in 1988. **(TEGE Subgroup)**