

**House Ways and Means Oversight Subcommittee on the 2011 Filing  
Season and  
FY 2012 Budget Request  
March 31, 2011**

**Questions for the Record**

**Rep. Diane Black**

- 1. My colleague, Chairwoman Jo Ann Emerson, raised the issue of the IRS's administration of the Historic Preservation Facade Easements when you testified before the Appropriations Committee on March 1. I am concerned to hear from our constituents who have been mired in this audit process, and am particularly troubled that even the IRS Advisory Council has raised concerns regarding these audits. According to the IRS Advisory Council's 2009 General Report, this aggressive auditing is straining the agency's resources even while it fails to distinguish between legitimate deductions and abusive tax shelters. Given these concerns, what does the IRS plan to do to improve the efficient and fair administration of this program? What steps does the IRS intend to take to ensure that the intent of Congress to support historic preservation is not frustrated by unjustified regulatory, enforcement and legal actions by the IRS?**

**Response:**

In administering the tax law provisions related to easements, the IRS strives to run a balanced program that facilitates the delivery of these important economic incentives, while ensuring that only those taxpayers legitimately entitled to the benefits are allowed them.

Verifying compliance with the requirements outlined in the tax law is complex, and extremely fact-intensive. As with any provision in the tax law that is dependent on valuation, it is also frequently subject to controversy between the government and the taxpayer.

Faced with these complex issues, the IRS has adapted and modified our programs over time, as the issues and environment around us change. We are also open to input from external stakeholders, such as our Advisory Council.

Among other enhancements to the program that we have made in recent years, we have stepped up our technical training efforts to ensure that our staff has the most up to date information in this area. And, we've increased our use of outside experts, as funding allows, making independent valuation recommendations.

**2. In 2009, The IRS Advisory Council recommended a safe-harbor audit policy and the creation of an expert easement advisory board as measures that the IRS should take to curb these issues. However, it is my understanding that the IRS has not adopted any of the IRS Advisory Council recommendations. What, if anything, has the IRS done to implement these recommendations? I am aware that IRS believes it does not have the authority under existing law to implement the IRS Advisory Council recommendations. On what basis has the Agency reached this conclusion and what can Congress do to help the IRS implement these recommendations?**

**Response:**

The Internal Revenue Service Advisory Council (IRSAC) provides valuable external perspective on tax policies and programs administered by the IRS. The dialog between the IRSAC and the IRS is robust, and covers a number of significant and sometimes controversial issues. In many cases the IRS accepts IRSAC recommendations, and in other cases the IRS does not agree with those recommendations.

With respect to the recommendations that you reference, the IRS did not accept them for both policy and practical reasons that we would be happy to discuss further. In addition to the limitation of authority under current law that you raised, the IRS believes that the benefits that would come from reduced taxpayer burden would be overwhelmed by the non-compliance (whether intentional or not) that would result if the recommendations were adopted.

- 3. I understand that the National Taxpayer Advocate may be looking at the issue of the Service's administration of the historic preservation easement statutes. There has been a significant drop-off in donation applications over the last few years, while the amount of resources both the IRS and donors expend to resolve these legal disputes have become substantial. In response, can the IRS temporarily suspend enforcement actions related to this program, until Congress considers the Taxpayer Advocate's recommendations for the proper implementation of the program?**

**Response:**

The IRS is responsible for administering the tax law as enacted by Congress. Should Congress change the statute, the IRS would also change the manner in which it administers the law to reflect the provisions of the statute as changed.