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February 11, 2011

Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

As the Chairman of the Committee on Ways and Means and Chairman of the Subcommittee on Oversight, we look forward to working with you during the 112th Congress. As we have discussed, it is critical to explore the best ways to protect taxpayer dollars from waste, fraud, and abuse. Part of this discussion, as you know, is the importance of reducing improper payments through the Internal Revenue Service's ("IRS") Earned Income Tax Credit ("EITC") program.

Throughout the federal government, improper payments lead to tens of billions of wasted taxpayer dollars every year. As President Obama wrote in his Executive Order on reducing improper payments, federal agencies "must make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time."¹ As you know, the EITC is a refundable Federal income tax credit that distributes more than \$50 billion to low and moderate income workers every year. It also ranks among the most poorly administered federal programs in terms of improper payments. Every year the problem is getting worse, and recent reports indicate IRS is unwilling to make a serious effort to stem this tide.

According to a 2009 Government Accountability Office study, the EITC program is responsible for the second-highest amount of improper payments of any federal program, behind only Medicaid.² As required by the Executive Order quoted above, IRS reports that between 23% and 28% of EITC payments are improper, at a cost to the American taxpayer of between

¹ Executive Order 13520.

² U.S. Government Accountability Office, GAO-09-628T, *Progress Made but Challenges Remain in Estimating and Reducing Improper Payments*, April 22, 2009, <http://www.gao.gov/new.items/d09628t.pdf>.

\$11 billion and \$13 billion in FY 2009 alone.³ Since the enactment of reporting requirements in the Improper Payment Information Act of 2002, records show that IRS has made improper EITC payments totaling between \$70.2 billion and \$83.9 billion.⁴

Despite the severity of this problem, IRS has not taken the steps necessary to reduce improper payments in the EITC program, according to a Treasury Inspector General for Tax Administration (“TIGTA”) report issued this week. Not only does it seem that the IRS is unable to reduce these improper payments, but it seems unable to even create reduction *targets*. According to TIGTA’s report, IRS admits that its traditional compliance efforts are insufficient to reduce the number of EITC improper payments, but has not made significant progress in pursuing alternative methods.

In the June 14, 2010 report to TIGTA, the IRS claimed that its efforts to regulate professional tax return preparers will reduce improper payments, although the report provided no information substantiating this claim.⁵ Even if this unsupported claim were true, the proposed actions are not likely to be implemented before 2014. According to the Inspector General, IRS is likely to issue “anywhere from \$55 billion to \$65 billion in improper payments” before reduction efforts are implemented.⁶ The IRS also claims that it reduces improper payments through its “EITC Paid Preparer Strategy,” in which IRS staff conduct “Due Diligence” visits to tax return preparers. The IRS says that this program reduced FY 2010 EITC improper payments by \$45 million, or well under one half of one percent of annual improper payments.⁷

While IRS appears to focus on tax preparers as the principle means of reducing EITC improper payments, TIGTA has made several common-sense suggestions that have gone unimplemented. These recommendations include:

- Requiring taxpayers with prior fraudulent EITC claims to recertify eligibility before receiving EITC payments in subsequent years;
- Ensuring taxpayer compliance with laws governing EITC qualifying-child eligibility;
- Using third-party data to ensure taxpayers comply with laws requiring work-valid Social Security numbers for those claiming the EITC; and
- Ensuring those claiming EITC payments are not using a Taxpayer Identification Number on more than one return.⁸

If these common-sense recommendations were implemented, TIGTA estimates they would save the American taxpayer more than \$8 billion over five years.⁹ Their lack of

³ Mark A. Ernst, Deputy Commissioner for Operations Support, letter to Inspector General J. Russell George, June 14, 2010.

⁴ TIGTA, *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Credit Payments Each Year*, Feb. 7, 2011.

⁵ Mark A. Ernst, Deputy Commissioner for Operations Support, letter to Inspector General J. Russell George, June 14, 2010.

⁶ *Id.*

⁷ *Id.*

⁸ TIGTA *final audit reports issued between June 2003 and September 2010*.

⁹ TIGTA, *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Credit Payments Each Year*, Feb 7, 2011.

implementation is not a cause for confidence in IRS reduction efforts. It also provides more evidence for what the Inspector General calls “a lack of accountability for eliminating payment error, waste, fraud, and abuse” at IRS.¹⁰

In light of the seriousness of this issue, the extraordinary amounts of taxpayer dollars at risk, and IRS’s apparent inability to take corrective action, we write to you today to request answers to the following questions. Please provide the requested information to us no later than February 25, 2011.

- 1) What efforts, if any, has IRS made to recover the \$11 to \$13 billion in FY 2009 improper EITC payments, and how much of this money has been recovered? Please provide any written policies or guidelines on recovery of EITC improper payments.
- 2) According to the TIGTA report, IRS’s reduction of improper payments depends on a plan announced in January 2010 to “register, license and create enforcement tools that impact the paid return preparer community more broadly.”¹¹ Please provide details of this plan and describe what effect IRS believes this will have on EITC improper payments and how the IRS plans to measure the impact of this strategy.
- 3) Since 1999, IRS has focused on tax return preparer compliance through its “EITC Paid Preparer Strategy.” Please detail how the IRS measures the success of this program and how it calculates estimates of the program’s impact on EITC improper payments. Also provide the following details:
 - a. How this program differs from the January 2010 plan described above;
 - b. The number of “Due Diligence” visits IRS conducted under this program in FYs 2009 and 2010;
 - c. Details on how targets of visits are chosen; and
 - d. The cost of this program in FYs 2009 and 2010.
- 4) TIGTA’s report outlined five recommendations from past reports that have not been implemented by your agency and makes two additional recommendations. For each of these recommendations, please detail the IRS’s timeline for implementation. For each recommendation the IRS does not plan to implement, please describe the IRS’s reasons for not doing so. For any recommendation with a planned implementation date beyond 2011, please explain the reasons for delay.
- 5) Your agency has made the excuse that it cannot set reduction targets for EITC improper payments because of the need to focus on higher income taxpayers. Please explain this in greater detail, along with a breakdown of IRS’s allocation of examination resources by income level, income type, or any other relevant examination distinction, both in terms of staff and budget.

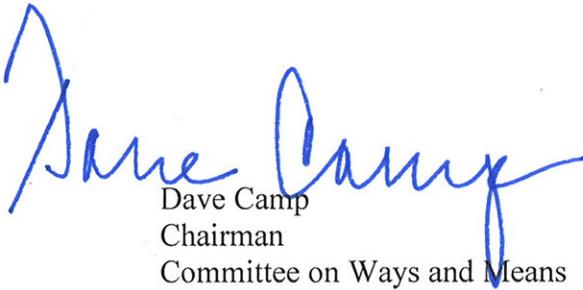
¹⁰ *Id.*

¹¹ Mark A. Ernst, Deputy Commissioner for Operations Support, letter to Inspector General J. Russell George, June 14, 2010.

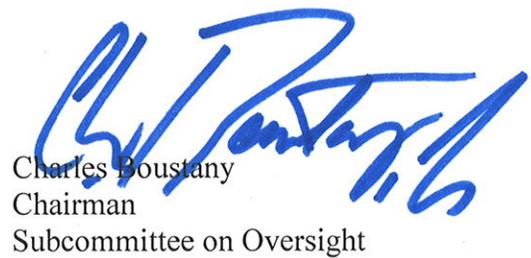
- 6) We understand you have concerns about several of the figures in TIGTA's report. Please provide a detailed explanation of your concerns and how you think the numbers should be corrected, if at all.

We know you share our determination to better protect taxpayer dollars. We look forward to receiving your response and thank you in advance for your assistance as we fulfill our Constitutional oversight responsibilities. If your staff should have any questions, they should contact Jennifer Safavian or Chris Armstrong at (202) 225-5522.

Sincerely,



Dave Camp
Chairman
Committee on Ways and Means



Charles Boustany
Chairman
Subcommittee on Oversight