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ON BEHALF OF THE

THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

BEFORE

THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT

HEARING ON

“IRS REFORM: RESOLVING ^{Text}TAXPAYER DISPUTES”

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INTRODUCTION

Chairman Buchanan, Ranking Member Lewis, and Members of the House Subcommittee on Oversight, thank you for the opportunity to testify today. My name is Chastity Wilson. I am a principal in charge of dispute resolution services at CliftonLarsonAllen LLP and specialize in Internal Revenue Service (IRS or "Service") controversy matters. I am also the Vice Chair of the IRS Advocacy & Relations Committee of the American Institute of Certified Public Accountants (AICPA). I am pleased to testify today on behalf of the AICPA.

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state, local and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We applaud the leadership taken by the Subcommittee to address how the IRS can better serve the public through focusing on the taxpayer perspective and the need for the agency to resolve taxpayer disputes in a timely, efficient and cost-effective manner.

The IRS Office of Appeals ("Appeals") offers taxpayers a number of viable options to resolve a dispute (fast track settlements, early referral, fast track mediation, post appeals mediation, etc.). However, without an independent and customer-focused approach, the dispute process is intimidating, inefficient or ineffective for most taxpayers.

The AICPA is committed to improving the taxpayer and tax preparer experience when interacting with the IRS. Our testimony primarily focuses on recommendations to improve the independence and efficiency of the dispute resolution process. We also offer suggestions to ensure that the IRS understands the taxpayer perspective and delivers "customer-focused" service.

PENALTY DISPUTES

Upon receipt of an IRS notice, taxpayers and/or the taxpayer representative will review the agency's claim and sometimes agree that there was a reporting error and the taxpayer owes the tax and related interest. However, if the taxpayer made an effort to comply with the requirements of the law, but were unable to meet the tax obligations due to circumstances beyond their control, the taxpayer may qualify for penalty relief (reasonable cause, first time penalty abatement, and statutory exception).¹

The initial and most-efficient process for resolving taxpayer penalty disputes begins with the taxpayer sending a letter requesting penalty relief providing details on facts and circumstances

¹ Internal Revenue Manual (IRM) [20.1.1](#), Introduction and Penalty Relief.

that prevented the taxpayer from meeting their tax obligations. Penalty disputes are currently handled independently within each of the primary IRS divisions (Wage & Investment, Large Business & International, Small Business/Self-Employed and Tax-Exempt & Government Entities).

The IRS needs to ensure independent and consistent settlement of penalty disputes. It has been our experience that there is no consistency across the IRS divisions on the application of the penalty relief provisions. There is also concern that the IRS personnel assigned to penalty notices often do not have the necessary training or expertise to review the taxpayer's submission for penalty relief.

Frequently, the initial IRS response to the taxpayer's request for penalty relief is to deny abatement without full consideration of the taxpayer's technical arguments or reasonable cause submission. From a taxpayer perspective, this practice is inefficient because the request for penalty relief is the first and certainly the most expedient opportunity to resolve a taxpayer's dispute. This routine denial of requests for penalty relief has forced an increased number of taxpayers to simply pay the tax and penalties they view as unwarranted, or seek Appeals' involvement, in order to resolve their tax penalty notices.

We recommend that Appeals' leadership undertake a review of the penalty notice processes with other IRS divisions to identify necessary training, systemic problems and duplication of efforts to ensure a consistent settlement process of penalties. The review should reduce the number of taxpayers having to pursue Appeals – providing a more-timely, efficient and cost-effective process – while ensuring taxpayers have the opportunity to present their case in a fair and independent manner.

IRS APPEALS

Appeals is the primary administrative dispute resolution forum for any taxpayer contesting an IRS compliance action. The mission of Appeals is to "resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service."²

To resolve tax controversies, without litigation, Appeals holds conferences. Conferences provide a meaningful and unique opportunity for taxpayers to present their positions and allow Appeals officers to independently consider settlement proposals in order to resolve tax disputes. We appreciate the successful efforts of Appeals to settle the majority of the cases that come within its jurisdiction in this less formal and less costly manner, relative to litigation.

In October 2016, Appeals implemented several changes to its conference procedures through revisions to the Internal Revenue Manual (IRM) seeking to improve the quantitative and

² IRM [8.1.1.1](#), Accomplishing the Appeals Mission.

qualitative aspects of the Appeals results.³ Although we appreciate the IRS's efforts to reevaluate their processes, we suggest considering whether such changes affect Appeals' ability to independently and objectively help taxpayers resolve tax disputes.

To prevent erosion of the core values of independence and impartiality with regards to the IRS dispute resolution process, the AICPA suggests that the Subcommittee consider the following key areas:

- Limit appeals conferences to Appeals personnel, the taxpayer and/or the taxpayer's representative;
- Offer taxpayers the option of face-to-face conferences; and
- Provide the Appeals Team Case Leader delegated settlement authority.

1. Limit Appeals Conferences to Appeals Personnel, the Taxpayer and/or the Taxpayer's Representative

For Appeals to effectively accomplish its mission, it has long been recognized that Appeals needs adequate insulation and independence from influence of other IRS functions during settlement conferences.⁴ Appeals officers should independently evaluate the facts and law in each case while attempting to reach a fair and impartial settlement. Historically, the settlement conference participants were the Appeals officer and the taxpayer and/or the taxpayer's representative.

One significant change to the IRM involved the participation of other IRS employees in the Appeals settlement conference. Appeals now has the discretion to invite the IRS Office of Chief Counsel ("Counsel") and/or representatives of the IRS's Examination divisions ("Compliance") to the settlement conference.

Independence is essential in order for Appeals to operate in a fair and impartial manner. However, the perception of an Appeals officer's independence, and the fairness of the Appeals process, is diminished if the conference attendees include the IRS compliance employees who examined the tax returns (and likely the team's manager), IRS specialists who participated in the issues before Appeals (and likely each specialist's manager), and IRS Counsel who assisted the Compliance team (and likely Counsel's manager). Taxpayers are easily outnumbered and can feel pressured into conceding to the IRS's request. Alternatively, if taxpayers question the fairness of the Appeals process, they may prefer costly and burdensome litigation as opposed

³ As revised in October 2016, IRM [8.6.1.4.4](#) states: "1) Appeals has the discretion to invite Counsel and/or Compliance to the conference. The prohibition against ex parte communications must not be violated. See Rev. Proc. 2012-18. Appeals may also request that other experts attend conferences. 2) See other IRM Part 8 sections for participation by IRS employees in cases under the Alternative Dispute Resolution (ADR) Program. This includes IRM 8.26.5.4.7, Participants, that reflects Appeals' discretion to have Counsel, the originating function, or both participate in a Post-Appeals Mediation proceeding for a Non-Collection Case."

⁴ IRS Restructuring and Reform Act of 1998, section 1001(a)(4). The [IRS Restructuring and Reform Act of 1998](#) directed "an independent appeals function within the IRS."

to reaching a settlement. Without independence or the perception of independence, Appeals becomes an adversary to the taxpayer.

In a recent settlement conference with my client, the Appeals personnel openly asked Compliance what they thought was a fair settlement before reaching a final decision. After the conference, the taxpayer asked how it was possible for Appeals to maintain independence when they were seeking the opinion of the Compliance team. Although in reality, IRS employees may or may not have influence over the Appeals process, it is hard to view Appeals as "objective, impartial, and neutral in fact as well as appearance" when Compliance and/or Counsel is intimately involved in the settlement decision. Without the perception of independence, the Appeals process is not nearly as effective as it has been in the past.

Appeals should establish a conference process that highlights its independence by drawing distinct lines between its interactions with other IRS functions. If necessary, Appeals could invite IRS Counsel or Compliance, along with other appropriate experts, to a preconference. However, once the taxpayer's presentation to Appeals begins, it is crucial to limit the meeting participants to the appropriate Appeals' personnel, the taxpayer and taxpayer representative.

2. Offer Taxpayers the Option of Face-To-Face Conferences

As mentioned earlier, to resolve tax controversies without litigation, the Appeals office holds conferences with taxpayers. Historically, if a taxpayer or the taxpayer's representative requested a face-to-face conference, Appeals would automatically transfer the case to the appropriate field office, except in limited situations. However, in October 2016, the Appeals function revised its rules transferring the decision to have a face-to-face conference from the taxpayer to Appeals. While a taxpayer can request a face-to-face conference, it is only permitted if Appeals deems it is necessary.

In my most recent experience with a penalty Appeals case, I had a young entrepreneur client with no financial background or experience. He hired and relied on an internal accountant who was incompetent although she represented herself otherwise. Unfortunately, payroll tax obligations were not met for several quarters until the client discovered the error. The Appeals officer called me and said it took him a "whole five minutes" to determine there was no reasonable cause and asked me not to discuss reasonable cause because it was a waste of his time. He had once been a former business owner, and based upon that experience, he said that all taxpayers that open a business should have the capacity to manage payroll. In this particular situation, where the client hoped to discuss his facts of the case, a conversation, much less a face-to-face conference, was considered unnecessary from the Appeals officer's perspective. The client's confidence in the voluntary compliance system eroded. From his perspective, he was not heard. He was unfairly denied the right to present his case without prior judgement.

For many taxpayers, the first opportunity to meet someone and talk about their case is at Appeals. For example, in correspondence exams, the taxpayer most likely will never speak to the same individual twice while trying to resolve their issue. In these cases, Appeals is the first

opportunity they have to present their case and have a discussion about their particular situation. By limiting face-to-face conferences, taxpayers lose the sense that their tax positions and perspectives are considered impartially. While it is possible to resolve some issues over the telephone, it is important that taxpayers have the option of a face-to-face conference.

3. Provide the Appeals Team Case Leader Delegated Settlement Authority

For most significant tax disputes, where the cases are technically complex and generally include sizeable proposed adjustments, cases are assigned a team of IRS Appeals officers and an Appeals Team Case Leader ("case leader") who is delegated settlement authority.⁵ The effectiveness of the Appeals process heavily relies on the case leaders' capacity to analyze the technical merits of the respective parties' positions and independently assess the hazards of litigation associated with the merits of each side's case. A case leader brings a unique value and quick settlement to some of the most significant issues that arise within our tax system.

However, an additional step was recently added to the process before a case leader can finalize a settlement. Due to concerns regarding the manner that Appeals resolved penalty cases, the Chief of Appeals recently decided that an Appeals Team Manager ("team manager") must review a case prior to a case leader finalizing a settlement.⁶

Unfortunately, this new requirement slows down the Appeals process and, from a tax practitioner perspective, has been detrimental to taxpayers. The new process generally results in an outcome that is less favorable to the taxpayer (since "reviewers" tend to only increase settlement amounts). Also, the additional review by a team manager can result in differences of opinion between the two government employees (the case leader and the team manager), which they must resolve internally before finalizing any agreement. As a result, taxpayers have reluctantly paid additional tax and penalty amounts to finally resolve the dispute or considered pursuing costly tax litigation.

Historically, case leaders' settlement authority has been exercised judiciously and in a manner consistent with Appeals' overall mission to resolve tax disputes without litigation. We encourage Appeals to provide truly independent delegated settlement authority to the case leader, and eliminate the extra approval process that was recently added, to ensure the taxpayers can resolve disputes in a fair and efficient manner.

⁵ See Delegation Order 8-8 (Formerly D.O.-66, Rev-15).

⁶ Case leaders are delegated settlement authority directly from the IRS Commissioner to settle tax disputes. However, the Chief of Appeals recently initiated a review of Appeals team case leaders' settlement authority due to a Treasury Inspector General for Tax Administration (TIGTA) report that highlighted discrepancies in the manner that Appeals resolved penalty cases. It was noted that the Appeals personnel making the initial decision on penalty disputes generally are less experienced than case leaders and without delegated settlement authority. Regardless, the Chief of Appeals determined that a team manager must review a case prior to the case leader finalizing a settlement.

"CUSTOMER-FOCUSED" SERVICE

It is essential that the IRS take into consideration the needs of tax practitioners and unrepresented taxpayers especially when dealing with compliance responsibilities. A customer-focused service approach will help reduce disputes in the first place by ensuring taxpayers that the IRS has given full consideration to their technical arguments. Furthermore, a customer-focused service approach should extend beyond the dispute resolution process and to all interactions with taxpayers and tax preparers.⁷ With a mindset of understanding the taxpayer perspective, the Service will enhance voluntary compliance and increase the public confidence in the integrity of the Service.

1. IRS Taxpayer Service

Congress and the administration should determine the appropriate level of service desired and needed by taxpayers. Agreed upon measures of success are necessary to improve both customer service and voluntary compliance.

To instill trust in the tax administration system, we recommend taxpayer service goals based on the following two guiding principles:

- The IRS should only initiate contact with a taxpayer if the IRS is prepared and able to devote the resources necessary for a proper and timely resolution of the matter.
- Customer satisfaction must be a goal in every interaction the IRS has with taxpayers, including enforcement actions. Taxpayers expect quality service in all interactions with the IRS, including taxpayer assistance, filing tax returns, paying taxes, and examination and collection actions.⁸

2. New Dedicated Tax Practitioners Services Unit

The IRS should create a new dedicated "executive-level" practitioner services unit that would centralize and modernize its approach to all practitioners. Over time, the IRS has established a number of functional departments. These individuals are dispersed across the IRS and are not coordinated in a way that enables practitioners to timely access critical information (such as, their clients' account status or the availability of dispute resolution opportunities). Nor do the current teams or processes systematically solicit, gather or evaluate practitioner feedback. Enhancing the relationship between the IRS and practitioners would benefit both the IRS and the millions of taxpayers served by the practitioner community.

A dedicated practitioner services unit would allow the IRS to rationalize, enhance, and place under common management the many current, disparate practitioner-impacting programs,

⁷ See AICPA comment letter, "[Ensuring a Modern-Functioning IRS for the 21st Century](#)," April 3, 2017.

⁸ Verbatim quote of the two guiding principles, The National Commission of Restructuring the Internal Revenue Service, [A Vision for a New IRS, Report of the National Commission on Restructuring the Internal Revenue Service](#), page 23, June 25, 1997.

processes, and tools. Moreover, by centralizing these programs, IRS employees would have a consolidated approach to timely resolving issues. This coordination and improved access of information would prevent unnecessary delays and inefficiencies (such as, requiring practitioners to submit the same information multiple times to multiple IRS employees). Finally, to ensure success of the practitioner services unit, it is essential for these services to approximate comparable private sector services and allow practitioners to resolve account issues for their clients in a timely and efficient manner.

Online tax professional account. The IRS should provide tax practitioners with a tax professional account as part of the IRS's online portal with account access to all of their clients' information (both individual and business accounts) where the practitioner has a valid power of attorney (POA) on file. Additionally, the secure tax professional account should allow the IRS to communicate directly to practitioners the information necessary to improve taxpayer awareness and allow practitioner correspondence with timely acknowledgement of receipt.

Furthermore, a centralized login system allowing for single sign-on authentication of the practitioner and immediate access to all client data, as opposed to practitioner authentication before accessing each client's account, is an indispensable efficiency for the IRS and practitioners alike.

Secure platform. The development of the online portal should include a comprehensive, agile platform that protects users' identities and their data, detects threats and immediately responds to potential security breaches. In order to enhance taxpayer protection, practitioners who want access to taxpayer accounts should consent to guidelines such as Circular 230 or other similarly approved requirements. Professional tax practitioners can become particularly active and safe users of online services if the IRS invests early in providing a digital mechanism for POA and disclosure authorization and creates practitioner accounts *contemporaneously* with individual online accounts.

To continue to improve efficiency, we also recommend that the IRS focus its attention on replacing the Centralized Authorization File with a consolidated online solution utilizing electronic signatures and an algorithmic-driven approval process that is as close to real time as possible.

Robust practitioner hotlines. IRS should provide tax practitioners with a robust practitioner priority hotline (or hotlines) with higher-skilled employees. These employees should have the experience and training to understand and address more complex technical and procedural issues. This expertise would allow the IRS to focus its training to a particular technical area allowing designated employees to resemble its counterparts in the private sector. The IRS should also consider hiring experienced people such as graduate students or retired practitioners seeking part-time or seasonal employment.

Designated customer service representatives. Under the practitioner services unit, the IRS should assign customer service representatives (also known as a single point of contact) to each

geographic area to address unusual or complex issues that practitioners were unable to resolve through the priority hotlines. We recommend allocating the number of representatives based on the number of practitioners in a specific geographic area.

CONCLUDING REMARKS

The dispute resolution function is a critical component in the IRS's ability to fulfill its mission and for taxpayers to properly comply with their filing obligations. The most efficient process for resolving disputes involves the initial request for penalty relief from taxpayers. The IRS should undertake a review of this process across the agency to identify necessary training, systemic problems and duplication of efforts to ensure a consistent and fair treatment of all taxpayer disputes.

If a taxpayer must take additional steps to resolve its dispute through the Appeals process, it is crucial to (1) limit settlement conferences to the appropriate Appeals' personnel, the taxpayer and taxpayer's representative and (2) provide taxpayers the option of a face-to-face conference. We would also urge the IRS to provide truly independent delegated settlement authority to the case leader, and eliminate the extra approval process that was recently added, to ensure the taxpayers can resolve disputes in a fair and efficient manner. The recent changes to the dispute resolution process jeopardize its customer-focused approach and their perception, or in some situations their assurance, of independence.

Furthermore, a customer-focused service approach should extend beyond the dispute resolution process and to all IRS taxpayer services, including a dedicated tax practitioner services unit. With a mindset of understanding the taxpayer perspective, the Service will enhance voluntary compliance and increase the public confidence in the integrity of the Service.

The AICPA appreciates this opportunity to testify and we urge this Subcommittee to consider our suggestions as Congress decides how to improve the dispute resolution process.