

October 18 -19, 2012

Southeast Regional (SER) Bar Liaison Meeting

Washington, DC

Time: 10/18/2012 1:00 p.m. – 4:30 p.m. and

10/19/2012 8:00 a.m. – 3:30 p.m.

Attendees: IRS Representatives and Name & Title of Major Organizational Representatives

Attendees:

IRS Representatives

- Rhonda Brown, Senior Stakeholder Liaison-Field, IRS
- Rick A. Raven, Special Agent in Charge, Criminal Investigation, Washington DC Field Office, IRS
- Scott Reisher, Director, Collection Policy, SB/SE Division, IRS
- Carol A. Campbell, Director, Return Preparer Office, IRS
- Chris Wagner, Director, Appeals, IRS
- John T. Manhire, Chief, Legal Analysis Branch, Office of Professional Responsibility, IRS
- Nina E. Olson, National Taxpayer Advocate, Taxpayer Advocate Service, IRS
- Laura Baek, Attorney Advisor, Taxpayer Advocate Service, IRS
- Melaney J. Partner, Director, Customer Education & Outreach, Tax Exempt & Government Entities, IRS
- Steve Grodnitzky, Tax Attorney & Manager, EO Technical of Exempt Organizations, Tax Exempt & Government Entities, IRS
- Tom R. Thomas, Division Counsel, SBSE, Office of Chief Counsel, IRS
- Debra K. Moe, Acting Deputy Division Counsel, Office of Chief Counsel, IRS
- Barbara J. Fiebich, Director, Examination, Operations Support, SBSE Exam, IRS

Southeast Regional Bar Liaison Members

- Jeffery H. Kess, Co-Chair, Southeast Regional (SER) Bar Liaison Committee, Attorney, Gomel Davis & Watson LLP
- Hope Clark, Co-Chair, SER Bar Liaison Committee, Enrolled Agent, Gaitherwright Freeman & Associates, PSC
- Howard I. Williams, Attorney, Brooks, Pierce & McLendon
- Harris L. Bonnette Jr., Attorney, Fisher Tousey, Leas & Ball
- David Polashuk, Attorney, Levy, Mann, Caplan & Polashuk, LLP
- Alan I. Weinberg, Attorney, Dixon Hughes Goodman LLP
- Gregory L. Fullerton, Attorney, Watson Spence LLP
- Steve C. Horowitz, Attorney, Wishart, Norris, Henninger & Pittman, PA
- W.Y. Alex Webb, Attorney, Webb & Graves PLLC
- Rick E. Graves, Attorney, Webb & Graves, PLLC
- Chaya Kundra, Attorney, Kundra & Associates
- Mitchell Horwitz, Attorney, Fowler White Boggs PA
- Lance G. Einstein, Attorney, Gomel, Davis & Watson, LLP
- Kevin T. May, Attorney, Webb & Graves PLLC

- J. Nicholas Livers, Attorney, Hyden Miron & Foster PLLC
 - William Robert "Bob" Pope Jr. , Attorney, White & Reasor PLC
 - E. Martin Davidoff, Attorney, E. Martin Davidoff & Associates, PSC
 - Jessica L. Craven, Attorney, Gaitherwright Freeman & Associates, PSC
 - Robert J. Fedor, Attorney, Robert J. Fedor, Esquire LLC
 - Christin M. Bucci, Attorney, Bucci Law Offices
 - Robert C. Webb, Attorney, Frost Brown & Todd LLC
 - Aaron A. Smith, CPA, Aaron A. Smith, CPA
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Opening and Introduction

Opening remarks, introductions and greetings provided by Jeffrey Kess & Hope Clark, Co-Chairs of the Southeast Regional (SER) Bar Liaison Committee.

Rhonda Brown, Senior Stakeholder Liaison (SL) also shared opening remarks. She welcomed everyone to the meeting and thanked them for their attendance. She advised that she was the new Practitioner Lead for the South Atlantic Area as of February 2012 and would be their new Point of Contact and coordinator of their meetings going forward. She advised her Area Manager, David Yeskoo, wanted to attend and was looking forward to attending the meeting. However, due to travel budget constraints, he was unable to attend. Rhonda thanked Marie Wright, her colleague, and Dave, for their efforts in conducting these important meetings in the past. These meetings have been highly successful since they began; Rhonda looks forward to continuing the legacy of her colleague and manager. She advised due to SL's new business model, which has reduced the level of face-to-face meetings, she hopes that their organization can continue to conduct and support these very important meetings in the future.

Rhonda also provided a folder to all attendees with various items including the following: an agenda, speaker biographies, Stakeholder Liaison Contacts by State, Virtual Small Business Tax Workshop CD, Multilingual Products and Services List brochure, Publication 4938 Tax Return Preparer Requirements, Publication 4591 Small Business Federal Tax Responsibilities brochure, Publication 4707 Stakeholder Liaison brochure, IRS Tax Help and Tax Professionals bookmarks, Federal/State Tax Institute brochure, Return Preparer Office (RPO) PowerPoint, various Office of Professional Responsibility (OPR) handouts and additional information pertinent to the meeting.

Meeting Summary

October 18, 2012

Rick A. Raven, Special Agent in Charge, Criminal Investigation (CI), stated CI allocates their resources as follows:

- 50% of resources are used on legal sources cases
- IRS only agency that has jurisdiction for Title 26
- Approximately 25% of resources involve money laundering investigations such as narcotics, bank secrecy, and embargo cases.

CI top priorities, which are as follows:

1. Identity (ID) Theft

- Number one priority
- ID theft cases most prevalent are mass mail, death master file-using Social Security Numbers (SSNs) of deceased taxpayers, people seeking employment at hospitals, restaurants, etc. just to steal SSNs
- 12% of resources have been spent on ID theft
- Puerto Rican SSNs used because Puerto Ricans generally do not have filing requirements
- Majority of cases coming from local law enforcement level
- CI actively prosecuting ID Theft cases.

2. International

- Second priority-International cases-33,000 people came in under voluntary disclosure; collected \$5 billion;
- If taxpayer comes in under voluntary disclosure program before IRS hears about them, the IRS may not recommend prosecution. If amended returns are filed before IRS learns about taxpayer (so called silent disclosures), this may impact criminal potential and is risky because it is treated as an admission and can be used against taxpayer. My advice is to come in under voluntary disclosure program and get assurance upfront.

3. Treaty Cases

- a. 4000 names received pursuant to treat request.

4. Fraud Referral Cases

- Acceptance rate higher than in the past because of fraud technical advisors for Revenue Agents (RAs) and Revenue Officers (ROs); approximately 60% of fraud referrals are accepted
- Developing cases better
- Most difficult part of investigating and prosecuting cases is proving intent and willfulness
- Taxpayers make job easier by falsifying documents and lying to RAs
- First thought is search warrant
- Doing more e-mail search warrants and reviewing e-mails
- Seize phones-text messages pretty strong evidence
- Failure to cooperate could be one of the badges of fraud
- May initially talk and/or visit taxpayers, with follow-up contact with return preparer
- Trust Fund cases-Major factor is what is being done with the money.

5. Anti-government-sovereign citizens

- Starting to see increased activity.

Scott Reisher, Director, Collection Policy highlighted the following: IRS has expanded streamlined installment agreement (IA) criteria, the specific changes include:

- o In fiscal year 2011, recognizing small businesses are an important part of the nation's economy, we increased the dollar threshold of In-Business Trust Fund

- Express IAs significantly from \$10,000 to \$25,000 (must be Direct Debit IAs (DDIA) and paid within 24 months).
- In FY12, focused on individuals, we increased the dollar threshold for streamlined IAs from \$25,000 to \$50,000 (must be DDIA's).
 - In FY12, expanded the timeframe to full pay from 60 to 72 months although penalties and interest continue to accrue while making payments.

DDIAs make management of finances easier; including reduced time spent paying IA, opening mail thus resulting in cost and time savings. Taxpayer account numbers are confidential and this payment method is easy to use and ensures payments are made timely thereby avoiding default (default rate is better) of the agreement due to missed or late payments. Other benefits include reduced user fee, saves the government money by reducing mailing of monthly payment notices, ensures the proper amount is collected and minimizes the burden for a proactive taxpayer.

The new IA criteria applies if using Online Payment Agreement (OPA) application on irs.gov, calling toll free/Automated Collection System (ACS), sending correspondence or dealing with a local Revenue Officer.

OPA is the IRS self help/assistance option to establish an IA in real time from your home, office or remote location. Practitioners/taxpayers can both access OPA. The features include no additional financial verification or forms being required with immediate approval notification once IA is established. The application has a payment calculator and provides up-to-date balance due amounts with accruals. You can request extension of time to pay (up to 120 days) and the application can handle "pre-assessed" liabilities. There is no cost to use OPA (free to use) but IA user fees do apply. Lastly, once you have an IA, you can go into the application and revise an existing IA (adjust monthly payment amount and/or payment due date).

Regarding Notice of Federal Tax Liens (NFTL) – one tip for practitioners is to allow the Notice of Federal Tax Lien (NFTL) to release first then request NFTL withdrawal via Form 12277. Generally, it takes up to 30 days from receipt of the withdrawal application to mailing to the recording office, but IRS is making every attempt to expedite these requests. The taxpayer will be mailed a copy of the withdrawal certificate at the same time as it is sent to the recording office.

The IRS recognizes that it is both sound business practice and good tax policy to settle some cases for less than the total amount due. An Offer in Compromise (OIC) is the administrative mechanism for reaching such a settlement. OIC changes include the following:

- Implemented procedures to promote greater reliance on internal research and records check to determine ownership and equity in real and personal property which equates to less documentation and fewer requests verification,
- Use telephone as primary form of contact/communication (instead of correspondence)
- Accept oral testimony, unless the information provided appears to be questionable

Then on May 21, 2012, IRS issued the following guidance

- Revised Form 656 in which only two payment options / term (five or less or six-24) no deferred payment option

- o Greater flexibility when considering ability to pay / reasonable collection potential
- o Revised calculation of taxpayer's future income – use a multiplier of 12 or 24 (previously it was 48/60)
- o Allowing payments on post high school student loans guaranteed by federal government
- o Allowing payments for delinquent state/local taxes made on a percentage basis
- o Narrowed the parameters and clarified guidance for dissipated assets in Returns Compliance Program (RCP)

Setting up payments through Electronic Federal Tax Payment System (EFTPS) is better than sending in paper checks. Practitioners suggested recurring payment be setup for EFTPS. To align payments with various pay schedules for taxpayers, practitioners also suggested consideration is given to have weekly and bi-weekly options available for DDIA's.

Currently, Bobby Hunt is Director, Field Collection with responsibility and oversight of the Revenue Officer (RO) field personnel.

Scott also discussed penalty abatements and the First Time Abate option. Recent IRM updates include 5.15.1 (Financial Analysis) and a new IRM 5.1.24 (Third Party Payer Arrangements for Employment Taxes) which was published in August 2012.

Practitioners raised the following issues to Scott:

- Systemic problem-levy sent out due to not providing 433-A; however no notice sent to request 433-A **(Scott requested that notice number be provided so matter can be researched and addressed)**
- Lack of return calls from ROs **(issue elevated to Director, Field Collection)**
- Financial analysis change-national standards
- Lower credit card fees could make this payment alternative more attractive to taxpayers **(Scott advised that options are being explored)**

Carol A. Campbell, Director, Return Preparer Office, stated she has been in new position for one month. Has 21 years of service. She shared the following Registered Tax Return Preparer and Practitioner Tax Identification Number (PTIN) updates and PowerPoint:

- Officially launch PTIN renewal period next week; had a couple of bugs initially in system, but have worked through; process should be more user friendly
 - Latest statistics on paid preparers
 - 729,488 PTINS valid for 2012 (860,180 total PTINs issues)
 - 43,403 Enrolled Agents (EAs)
 - 214,720 Certified Public Accountants (CPAs)
 - 32,134 Attorneys
 - 22,332 Registered Tax Return Preparers (RTRPs)
 - 325,203 Registered Tax Return Preparer Candidates
 - 57,049 Supervised Preparers
 - 45,930 Non-1040 Preparers

- Current Priorities
 - Accomplish a successful PTIN renewal season
 - Multiple system enhancements and customer service improvements implemented
 - Establish community of competent preparers
 - Must pass test by December 31, 2013
 - Must have 15 Continuing Professional Education (CPE) hours before end of 2012; this year has self certification; IRS taking people at their word; will spot check to see if people record hours
 - Must have certain credentials to use certain language of RTRP; have limits regarding using that language
 - Need your PTIN prior to take the test
 - Launch PTIN public listing
 - Will include attorneys, CPAs, EAs, RTRPs only
 - Continue development of compliance strategy
 - Many ghost preparers; trying to reduce the number; have a referral form to report ghost preparers
- Rules and requirements for tax practitioners depending on their credentials (see PowerPoint below for details)
- RTRP and EA Test Overview
 - Test specifications and study materials are on www.irs.gov/taxpros/tests
 - RTRP: one level, Form 1040 series only
 - EA: three levels - individual, business, representation
 - Schedule at 260+ Prometric testing centers
 - \$116 fee for RTRP
 - \$105 fee per part for EA
 - Deadline: December 31, 2013
- Continuing Education Requirement
 - Began in 2012 for RTRPs and RTRP candidates with provisional PTINs
 - Fifteen Continuing Education (CE) credits required includes three hours of federal tax law updates, two hours of ethics, and 10 hours of other federal tax law
 - Obtain from IRS-approved providers
 - Info available at www.irs.gov/taxpros/ce



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Chris Wagner, Director, Appeals, stated he has been in Appeals for one and a half years. Prior to becoming the Director of Appeals, he was the former Small Business Self Employed (SBSE) Commissioner.

Chris stated that 55% of Appeals workload is collection cases. Thirty-eight percent of their inventory is Collection Due Process (CDP) cases. Cases received last year

went down. Appeals staff was reduced by 6%. 144,000 cases were received and closed. Work cases first-in first-out.

Fast Track Mediation (FTM) is an expedited dispute resolution process. It is used to facilitate communication and resolve unagreed issues between Compliance and the taxpayers at the conclusion of an examination/collection determination. FTM increased in SBSE - went up 300% this year; from 21 to 64 cases also received more from Large Business and International (LB&I).

Fast Track Settlement (FTS) is different. Fast Track Settlement is a new Alternative Dispute Resolution (ADR) program. The FTS program was designed to resolve audit issues during the examination process within a goal of 60 days from acceptance of the application in Appeals. The process uses the settlement authority and mediation skills of Appeals. If the parties are not able to reach a resolution, the Appeals officer can use delegated settlement authority to propose a settlement.

Fast Track Settlement for SBSE has been piloting for six years. Pilot program first began in eight cities on the East coast. Will soon be expanding and rolling out to the remaining cities by the end of next year. Average time to resolve Fast Track Settlement cases is 34 - 38 days. Seventy six percent of FTS cases have been resolved. FTS is not available for collection cases, however, may eventually add trust fund cases. Penalty cases in Exam may also be added, however, uncertain about other penalty cases. Until FTS is implemented nationwide, FTM will be the only ADR option available for certain Collection and Exam cases in non-test cities. FTM will eventually be replaced with FTS. Will still have post appeal mediation; only received 100-200 cases a year. Since some still feel post appeal mediation is beneficial, will continue to have option available.

Practitioners expressed the following Appeals **issues**:

- Face to face issue - convenience of taxpayer; if Power of Attorney (POA) ask for a face to face; allow it; could ask taxpayer to sign that they agree; ask for a face-to-face CDP –In campus - want a face to face CDP; will get to place where they agree to transfer case where taxpayer located
- Addressing stale (old) financials 433A/B -in CDP cases; if POAs provide financials when initially file a CDP and it takes four months to get case assigned to Appeals officer, the 433A is considered old by the Appeals officer and they usually request a new one be prepared. Recommend that Appeals wait until case is assigned and then request the 433A provided so information is current and efforts to complete another 433A is not being duplicated which cost more time and money. Not fair to taxpayers since IRS has no predictability of time.

Response: Settlement officers can ask for new financial statements; however, IRM states IRS can use financial statements up to a year old. If request made, POAs should ask Settlement officers if can use current financial statements if none of the information on financial statement has changed. If any information needs to be updated, should just submit a new one. Either way, a financial statement is needed before the hearing.

- If going to submit an OIC at a CDP hearing, need more than 14 days. One of the practitioners, Chaya Kundra, stated when she sent an OIC to Appeals for one of her clients, the OIC was also sent somewhere else to be worked.

- Early issuance of 1057 letter; no resolution has been sought prior to 1058 being sent; sent 504 notice and no contact has been made with taxpayer after 504 sent then 1058 sent with no communication; cases could be resolved if given 45 days as required.

Response: SBSE is working on it.

- Problems with return calls from Appeals in campus
- Appeals will not consider first time abatements

Appeals did a recent re-alignment. As of October 1st, campus operations separated from field operations. One executive for all the campuses; did to have more focus on compliance issues and campus operations. Mary Howard is Director of Campus Operations.

The Appeals Judicial Approach and Culture (AJAC) project was developed to review contributors of case cycle time and tasks performed outside of the role of Appeals. The AJAC project team identified degree in which investigative actions occur. Appeals not to be the first finders of fact; job is not to be investigating. Appeals is trying to get back to a more judicial approach. Do not want to work and develop cases; want to resolve disputes.

Revenue Procedures 2012-18 discusses new ex-parte rules. Address changes to some current business practices and adopt new ones. Clarified new rules in February as to what can and can't do.

John T. Manhire, Chief, Legal Analysis Branch, Office of Professional Responsibility, advised OPR went through reorganization in February 2012. Legal Analysis Branch is what Enforcement Branch used to be. OPR is similar to American Bar Association model rules focused on informing and educating practitioners.

OPR has 700-800 open field cases; Conflict of interest is hot topic. Other issues seeing are individual compliance. Lack of filing taxes continues to be an issue. One year not a big deal but three or four is. Practitioners that haven't filed their file own returns in four years usually face disbarment.

Under Circular 230, willfulness has to be proven. Normally send a 60 day letter. 10.51(a)(6)-violation talks about willfully failing to file. Willful evasion is different than having a balance due; have to prove they willfully evaded. There is a distinction between failure to file and pay. No penalty for failure to pay. Willful evasion of payment is the standard.

Title 31 section 330 of the U.S. Code deals with four elements (character, competence, qualifications, and reputation). Together these equate to fitness to practice. OPR only works Title 31 cases, not Title 26.

10.82 deals with expedited suspensions if loss of license to practice or criminal conviction. If a state license is lost or practitioner is convicted of a crime, ORP may indefinitely suspend a practitioner. The practitioner still receives due process. There are proposed regulations that state if a practitioner fails to file four out of the last five annual returns or any five out of last seven less than annual returns (e.g., Forms 941), there can be an expedited suspension. Comments open on proposal until December 7.

OPR focuses their resources on outreach as they want tax professionals to understand their responsibility. Their primary focus is not to suspend licenses of practitioners but reserving resources for those that need to be taken out of the system. If a tax professional receives a reprimand, may receive a private letter or a soft conduct letter (60 day letter) and may close case without further sanctions.

OPR is currently working on tax debt resolution companies. Highly inappropriate for any IRS employee to refer or mention Circular 230 to tax practitioners regarding their handling of client's accounts. This may create a conflict of interest between the taxpayers and the POAs.

10.8(c) is designed to be a broad net that brings people under OPR's jurisdiction. Monetary Sanctions can be sought for violations as well. 10.34(b) brings disciplinary authority to owners of firms.

John also provided attendees with various handouts including IR-2012-63, Delegation Order 25-15 through 17, 2011 Discipline Results, Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases, and Notice CC-2012-018 regarding Enrollment Appeals.

Nina E. Olson, National Taxpayer Advocate, Taxpayer Advocate Service, discussed the use of the Taxpayer Assistance Order (TAO) by the Taxpayer Advocate Service to help taxpayers resolve their problems before the IRS. She also discussed some of the leading issues facing the Taxpayer Advocate Service (TAS) as reflected in its caseload. In particular, she discussed identity theft, return preparer fraud, correspondence exam, the Offshore Voluntary Disclosure Initiative (OVDI), and Virtual Service Delivery at the Taxpayer Assistance Centers (TACs).

The Taxpayer Advocate Service (TAS) is the taxpayer's voice at the IRS. TAS is an independent organization within the IRS and helps taxpayers resolve problems with the IRS and recommend changes that will prevent the problems. The National Taxpayer Advocate released the 2012 Annual Report to Congress in early January 2013. For more information about TAS or to access the 2012 Annual Report upon its release, visit www.irs.gov/advocate.

Tom R. Thomas, Division Counsel, SBSE, Office of Chief Counsel, discussed the following:

- **Identity Theft**
 - A challenge to IRS
 - The IRS identified and prevented the issuance of \$1.4 billion in fraudulent refunds in 2011. Also has a legal challenge as it is difficult to get the money back
 - Since 2008, more than 460,000 taxpayers have been affected by identity theft
 - Seeing more dishonest return preparers
 - Two types of ID theft-refund related and employment related
 - Comprehensive strategy to combat ID Theft
 - Fraud Prevention
 - New processes for handling tax returns
 - New compliance filters to detect fraud

- New initiatives to partner with stakeholders
 - A continued commitment to investigate the criminals who perpetrate these crimes
 - Work with local law enforcement agencies; taxpayers giving disclosure authorizations
- Victim Assistance
 - Guide to Identity Theft on irs.gov
 - Speed up case resolution
 - Provide additional training to IRS personnel
 - Increase outreach to and education of taxpayers so they can prevent and resolve tax-related identity theft issues quickly
- New Department of Justice (DOJ) Directive- Tax Division Directive 144
 - In September 2012, DOJ announced a new directive that provides for expedited criminal procedures in identity theft cases.
 - Tax Division Directive 144 took effect on October 1, 2012.
- What to do if you are a victim?
 - Respond immediately
 - Fill out and submit Form 14039 (ID Theft Affidavit) by mail or fax
- Have seen success in injunctions; can use limited injunctions
- Collection Due Process
 - Large part in Tax Court
 - Appeals makes determination
 - Most go to trial
 - There have been several important opinions in collection due process cases this year, which further defined the proper standard of review and addressed the issues of whether settlement officers and appeals officers must be appointed by the Secretary.
 - Dalton v. Commissioner, 682 F.3d. 149 (1st Cir. June 20, 2012)
 - Ability to go in court to fight liens and levies.
 - Deals with nominee levy case, abusive review
 - Cases should be decided based on the administrative record
 - Supported Robinette
 - Abuse of Discretion standard - IRS can be wrong and still win as long as its determination is reasonable.
 - IRS position upheld
 - Larry E. Tucker v. Commissioner, 2012 US App. LEXIS 7997 (D.C. Cir. April 20, 2012); came out of low income tax clinic
- Levies
 - Social Security benefits
 - Federal savings claims
 - Conflict regarding levying on Thrift Savings Plan Account - IRS levying and agency will not honor levy
 - Litigation cases
 - Paul Keohane v. United States, 669 F.3d 325 (D.C. Cir. Feb. 21, 2012); involved levy on social security benefits

- Thrift Savings Plan Levies
 - Agency that controls this won't honor levies for federal employees
 - Case still pending
 - Department of Justice Office of Legal Counsel Opinion
 - Procedures for Levying on TSP Accounts - CC Notice 2012-011
- Summons
 - In re John Does (Summons to California Board of Equalization), 2011 WL 6302284 (E.D. Cal. Dec. 15, 2011).
 - This case involved property being transferred to relatives with little to no consideration
 - Since success with offshore cases, John Doe summons are being used more (ex. California real property transfers)
 - Benistar Admin Services, Inc., et al. v. United States, 2012 WL 96569 (N.D.N.Y. Jan 12, 2012); served a summons to a bank
- Bankruptcy
 - Hall v. United States, 132 S. Ct. 1882 (2012).
 - Chapter 12 bankruptcy
 - Involve farmers and fishermen's bankruptcy
 - Post petition sale of property - estate or debtor's responsibility
 - Tax on sale following filing of case was not incurred by estate and, therefore, not dischargeable or collectible under Chapter 12 plan.
 - Same rationale could be extended to Chapter 13
- Mitchell and Holly Wogoman v. United States, 475 BR 239 (10th Cir. BAP, July 3, 2012).
 - IRS position - CC Notice 2010-216.
 - Compare In re McCoy, 666 F.3d 924 (5th Cir. 2012)
 - Defines what a return is; substitute for return was filed; question dischargeability
- Transferee Liability/Alter-ego or Nominee liens
 - McKinsley case-nominee lien/alter ego-used by list pending
 - Lien should be specifically describing property in nominee
 - Protections build in-CAP procedures, can also go to Counsel
 - Can go through wrongful levy & quiet title filing
 - If nominee-only attaches to that property; no appeal rights for nominee lien
 - If alter-ego-lien covers everything; have ability to sue on a state or local level
 - Lien covers everything in alter-ego cases
 - Has to go to Counsel for approval before determination
- Innocent Spouse
 - Won in three circuit courts
 - 6015(f)-no longer argue two year limitation for equitable relief
 - Rev Proc 2012-8
 - Innocent Spouse Update

- New Procedures in §6015(f) Equitable Relief Cases – Notice 2012-8 and CC Notice 2012-004
 - Notice 2012-8 - On January 5, 2012, the IRS released Notice 2012-8, announcing a proposed revenue procedure to update Rev. Proc. 2003-61.
 - CC Notice 2012-004 - On January 5, 2012, the Office of Chief Counsel issued CC Notice 2012-004, instructing attorneys to use the revised factors in Notice 2012-8 in cases in litigation.
- Tax Court Position
 - Sriram v. Commissioner, T.C. Memo 2012-91.
 - Hudgins v. Commissioner, T.C. Memo 2012-260.

Listed below are the practitioner questions that were raised at the meeting and the responses Tom provided:

1. Does an alleged alter ego have a right to a CDP hearing if the alter ego is the taxpayer? The questioner asked if the taxpayer can be the alter ego of himself.

As described in the IRM, "an alter ego is an entity that is legally distinct from the taxpayer, but is so intermixed with the taxpayer that their affairs (and assets) are not readily separable. As a result, the entity should be considered the same as the taxpayer for collection purposes." IRM 5.17.14.6(2). Thus, while the alter ego may technically constitute a legally separate/distinct entity (or individual) from the taxpayer, the Service may collect the tax liability from the alter ego as if the alter ego were the taxpayer.

With respect to whether an alter ego is entitled to receive a CDP lien/levy notice and request a CDP lien/levy hearing, the applicable regulations (Treas. Reg. 301.6320-1(a)(2) and Treas. Reg. 301.6330-1(a)(3)) clearly provide that a CDP lien/levy notice will only be given to the person liable to pay the tax as described in IRC sections 6321 and 6331(a) (i.e., the taxpayer). These regulations further direct that while other remedies are available (such as a hearing under CAP), CDP notices (lien or levy) will not be given to third parties holding property subject to a lien or levy related to liabilities of the taxpayer (including a "known nominee" of the taxpayer) since any such third party is not the taxpayer as described in IRC sections 6321 and 6331(a). Finally, applicable law (both regulations and statutes) also provides that a taxpayer is entitled to only one opportunity for a CDP lien hearing and one opportunity for a CDP levy hearing for each tax and tax period.

Thus, in accordance with applicable law as described above, only the taxpayer is entitled to receive a CDP lien/levy notice. An individual or entity alleged by the Service to be the taxpayer's alter ego for collection purposes is not entitled to receive a CDP lien/levy notice. In this regard, IRM 5.12.1.2.11 explains that while "[p]ersons identified as nominees or alter-egos are not entitled to a Collection Due Process hearing," a Letter 3177 (Notice of Federal Tax Lien Filing - Nominee or Alter-Ego) should be sent to the alleged nominee or alter ego along with a copy of the lien upon the filing of a nominee/alter ego lien. The Letter 3177 advises the nominee/alter ego of the available collection appeal rights and references Publication 1660 for further explanation.

To the extent the Service intends to file a lien or issue a levy with respect to property legally titled to an alter ego to collect certain tax liabilities of the taxpayer,

the taxpayer would be entitled to a CDP lien/levy notice if such notice was not previously provided to the taxpayer for the tax periods and liabilities at issue. If the alter ego is in fact the taxpayer as posed in the question above, then there would appear to be no need for the Service to make any alter ego determination. Rather, the Service would simply pursue collection from the liable taxpayer and issue CDP notices as appropriate.

2. How can a taxpayer with employment tax liabilities raise the merits of employment tax at a CDP hearing? Apparently, the Settlement Officer would not consider the merits of an employment tax liability and the attorney asking the question was not aware of anything that would prohibit the raising of the merits at the hearing.

In accordance with IRC section 6330(c)(2)(B), a taxpayer is entitled to raise "challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability." This opportunity to dispute the underlying tax liability applies to employment taxes as well as other liabilities such as income taxes. As explained in Counsel's CDP Handbook, "[a]n opportunity to dispute a tax liability under section 6330(c)(2)(B) includes an opportunity to dispute in Appeals taxes to which deficiency procedures do not apply" such as employment tax liabilities. For employment taxes, the taxpayer's prior receipt of a notice of proposed employment tax assessment, which informs the taxpayer of the right to go to Appeals, would constitute a prior opportunity to dispute the liability.

Thus, where the taxpayer owes outstanding employment tax liabilities and has not had any prior opportunity to dispute such liabilities, the taxpayer can challenge the merits of the underlying employment taxes during the CDP hearing. In these circumstances, the taxpayer should specifically raise this issue during the CDP hearing and present to Appeals any and all evidence supporting the taxpayer's challenge to the employment tax liabilities. See Treas. Reg. 301.6320-1(f)(2) Q&A F-3 and Treas. Reg. 301.6330-1(f)(2) Q&A F-3.

3. Can a CDP taxpayer bring a witness to the Appeals hearing?

As set forth in the applicable regulations (Treas. Reg. 301.6320-1(d)(2) Q&A D-6 and Treas. Reg. 301.6330-1(d)(2) Q&A D-6), "[t]he taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing." While the taxpayer has no express right to subpoena or examine witnesses at a CDP hearing, Appeals has the discretion to allow the taxpayer to examine a witness in specific cases. If Appeals does not permit the examination of the witness, the taxpayer could submit a declaration if he/she believes the testimony is necessary. Finally, we do not believe there are any specific prohibitions against the taxpayer bringing someone along with him/her to observe the CDP hearing should the taxpayer choose to do so.

4. In a case where an alleged innocent spouse has a case pending in the Tax Court under the two year rule of 6015(f) and was requesting a refund that had been withheld (or "taken" according to the attorney asking the question) by the Service, does the taxpayer have a right to the refund now that the two year rule no longer applies? Will respondent assist the petitioner with the recovery of the "refund?"

It is difficult to respond completely to this question, as no specific facts were provided. However, in general, if an innocent spouse case is pending before the Tax Court for which the IRS has originally denied relief under the two-year rule, IRS Notice 2011-70 instructs the IRS to "take appropriate action in the case as to the timeliness issue consistent with the position announced in this notice." In cases where the innocent spouse relief was denied solely because of the two-year rule, and the underlying merits of the case were not considered, the appropriate action would be for the case to be resubmitted to the Cincinnati Centralized Innocent Spouse Operation (CCISO) to consider the merits of the case. The taxpayer or the taxpayer's representative should speak to the Counsel attorney or paralegal assigned the case about having the matter resubmitted to CCISO. If, after the appropriate action is taken, it is determined that the taxpayer is entitled to innocent spouse relief, the taxpayer will be entitled to recover the refund, subject to the statute of limitations exceptions of section 6511.

Regarding whether respondent will assist the petitioner in recovering the refund, the IRS Counsel attorney or paralegal assigned the case should be able to assist the taxpayer in obtaining the refund.

Barbara J. Fiebich, Director, Examination, Operations Support, SBSE Exam, shared the following information:

- 57 million taxpayers are self-employed or supplement their income through small businesses
- Abusive promoters and transactions
 - Seeing increase in abusive tax return preparers and tax scheme cases
 - Lead Development Centers
 - identify and deter individuals who promote abusive tax schemes and/or prepare abusive returns
 - evaluate and develops information from internal and external sources.
 - conduct internet research to identify promoters/preparers and detect promotional material that market abusive tax schemes through the Internet
 - Conduct research and develop leads relating to Abusive Transactions
 - Authorize IRC §6700/6701 investigations
 - Provide field support for on-going investigations
 - Coordinate with Criminal Investigation, Counsel, and DOJ to ensure that appropriate penalties and/or sanctions are pursued when warranted
- Will sometimes lead to penalties or injunctions
- First 11 months of the year, DOJ obtained 45 injunctions
- Some schemes dealt with improper deductions
- Schemes resulted in \$10.8 million in estimated loss
- On April 12, 2012, DOJ barred two tax professionals from preparing returns; scheme involved phone excise tax and first time homebuyer's credit (estimated loss \$2.2 million)
- In South Florida, five tax professionals prepared thousands of tax returns. Scheme involved education expenses, first time homebuyer's credit. Charged

- over \$5,000 to prepare returns. Involved ID Theft; used ID of man who was incarcerated
- Emphasis on flow-through entities
 - Will increase overall number of examinations
 - Present compliance challenges
 - Entities include partnerships, S-corporations and fiduciaries
 - specifically aligning resources to address areas of the tax gap related to business income tax underreporting
 - Partnering with LB&I on initiative
 - Three components of concentration
 - Workload identification
 - Identification of issues
 - Increasing knowledge and expertise of examiners- provide supplemental training for examiners and have Subject Matter Experts (SMEs) available to examiners
- Will use package audit requirements-auditors use in Exam
- Repetitive audits-can be discussed on onset of audits
- Offshore Voluntary Disclosure Initiative (OVDI)
 - Program ran starting in 2009, 2011 and 2012
 - 2009 – 15,000K applicants and 11,000 cases
 - 2011 – 18,000 applicants and 12,000 cases
 - 2012 – opened in February 2012 and still open
 - Majority of cases being worked in SBSE
 - Dedicating adequate resources
 - Taking centralized approach - using streamline procedures in these cases
 - Consist of 27-1/2% offshore penalty
 - More than \$5 billion collected in 33,000 cases received
 - John Doe summons are ongoing
 - USB cases are being worked in Exam and Collection; can result in penalties
- National Research Program (NRP)
 - Looking at 12,000 1040s over multiple years
 - Looking at 2,500 corporate returns for one year
 - 3,700 visits to return preparers last year
 - Wants to improve accuracy and quality of returns
 - Earned Income Tax Credit (EITC) due diligence visits
 - Individual Taxpayer Identification Number (ITINs)
- Identity Theft
 - Working with the identity theft unit
 - Helping victims to learn what is needed to resolve issues
- Audit Technique Guides (ATGs)
 - Available to taxpayers
 - Three new ATGs; total of 50 ATGs available
- Ex parte communications with Appeals
 - Providing training to our examiners
- Fast track settlement program
 - Do have communication strategy

Practitioner raised the following issues/questions:

- Problems with Exam managers in Atlanta and Tax Compliance Officers (TCOs) - ex. competency and respect
- Is Exam still using and doing the K-1 matching program

- Barbara may be reached at Barbara.j.fiebich@irs.gov
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Roundtable & Comments

Participants found the session to be productive and informative.

Next Scheduled Meeting

No date or specific location was determined. Rhonda did suggest, however, the venue be changed to avoid possible problems in getting the event approved due to the location being associated with the National Republican Party. Additional steps and approvals were necessary this year in order to get the event approved. She recommended a regular chain hotel in the DC area be used instead. A couple of practitioners suggested using a local Marriott Hotel in the area.