

Southeast Regional Bar Liaison Meeting
In Partnership with the Internal Revenue Service
The Army and Navy Club – Washington, DC
October 20 - 21, 2011
Minutes

DAY 1

- I. Practitioner Working Lunch
 - A. Introductions
 - B. Discussion
 - 1. Lien Filings
 - a) Sporadic – no specific process
 - 2. Lien Withdrawals
 - a) Not timely
 - b) Not effective
 - c) No streamline process for new requirements
 - i) Lack of communication w/n IRS
 - 3. Trust Fund Recovery Penalty (TFRP) Protest
 - a) No notification to Taxpayer if protest filed and RO decides not to assert TFRP
 - b) Freeze on Taxpayer's refunds while protest outstanding
 - 4. Subordination of Lien Factors?
 - 5. Certificate of Discharge of Property from a Federal Tax Lien
 - a) Not timely
 - b) Need streamline process
 - 6. Defaulting Installment Agreements
 - a) Want updated financials
 - i) Not receiving notice requesting updated financials before receiving default notice
 - 7. CCH Power of Attorney Authorization
 - a) **Get info from Rick Graves**
 - 8. Expiring Liens Release
 - 9. Offshore Voluntary Disclosure
 - a) Where do things stand with the 2009 program?
 - b) How are you coordinating the 2009 with the 2011 program?
 - c) Why is the IRS putting Taxpayers who filed the traditional voluntary disclosure between the 2009 and 2011 programs into the 2011 program?
 - d) Where is the IRS going from here?
 - 10. Delay in mailing Final Notices of Intent to Levy/Premature Notices of Intent to Levy
 - 11. Partial pay installment agreements
 - 12. SFR – Bankruptcy
 - 13. Offer in Compromise ("OIC") Doubt as to Liability
 - 14. Large \$\$\$ Unit

- a) Closing
- 15. CAP Appeals
 - a) Should be able to get in-person appeal
- 16. Offer in Compromise Policy
 - a) Some offers successful in Brookhaven
 - b) Not many offers successful in the field
 - i) Go to Appeals
 - c) CDP Request vs. Filing Field Offer
 - i) Tax Court rights vs. Offer Specialist
- 17. Liens on Tangible Personal Property
- 18. RCA (Reasonable Cause Abatement) Limitations
- 19. Transferee Liability
- 20. OIC Recommendation (RO vs. Offer Specialist)
 - a) RO making recommendation and Offer Specialist not looking at decision independently
- 21. Expedited Consideration
 - a) Ex: 501(c)(3) losing tax-exempt status b/c saying not filing 990s
 - i) statutory revocation
- C. Proposed 2012 Meeting
 - 1. October 18 & 19
 - a) Will review any conflicts before finalizing
 - 2. Location
 - a) Will look into other locations
- D. David Yeskoo, Area Manager, South Atlantic Stakeholder Liaison Field
 - 1. IRS Introductions

II. Compliance and Service Small Business/Self Employed (“SB/SE”)

- A. Faris Fink, Commissioner, SB/SE
 - 1. 25,000 +/- employees in SB/SE
 - 2. OIC Program
 - a) Changes mainly in Memphis and Brookhaven
 - i) Offers \$100k or less of income and \$50k or less liability
 - b) Every offer is on its own merits
 - c) Working with OPR to address “advertising” tax advisors
 - i) e.g. JK Harris, American Tax Relief
 - ii) States more proactive in addressing
 - d) Accepted 18,000 offers so far this year
 - e) Allowing employees to call Taxpayers instead of just sending letters
 - f) Accepting 40%
 - 3. Streamline Installment Agreements
 - a) Small Businesses
 - i) Owe \$25,000 or less and do direct debit I/A
 - 4. In next 30 – 45 days, there will be “groundbreaking” announcements
 - 5. E-mail pilot program with practitioners
 - a) Will last 60 – 90 days

6. Liens
 - a) Lien Withdrawals
 - i) Full pay
 - Still have to file Application for Withdrawal
 - ii) Direct Debit I/A if under \$25,000 assessed liability
 - b) Liens generally withheld if \$10,000 or less liability
7. Abusive Transactions
 - a) Discovering through Examinations and Lead Development Center
 - b) Less sophisticated transactions
 - i) Line item transactions
 - ii) False Forms
 - e.g. 1099-OID
 - iii) False Schedule C
 - iv) False Schedule A
 - v) Bogus trust transactions
 - c) Injunctions effective
 - i) Quicker and better than criminal investigations
8. Focusing attention on individuals with income over \$200k and \$1M
 - a) High income = \$200k or greater
9. Voluntary Classification Settlement Program
 - a) More inquiries than expected
 - b) Do 1099s have to be filed timely?
 - i) **Will get answer**
10. Ethical Considerations of IRS Employees
 - a) Elevate to supervisor if questionable action(s)
 - b) Use TIGTA in extreme situations

B. Scott Reisher, Director, Collection Policy

1. Liens
 - a) Easy to file additional liens once one already filed
 - b) Real and personal property filings
 - i) Real property filed in location of property
 - ii) Personal property filed in location of individual
 - c) 90% + are now streamline
 - d) Lien releases
 - i) Have to release w/n 30 days
 - ii) Do not have to withdraw
 - e) Lien Withdrawals
 - i) New guidance did not go out until late June
 - ii) Do not ask for until after 30 days to allow time for release
 - iii) Will usually give in bankruptcy case
 - iv) For offers, do not have to wait 5 years (compliance rule) to request
 - f) Revenue Officers have ability not to file
2. New guidance on short sales out October 4
3. Discharges of Property from NFTL

- a) Only need one 3rd party appraisal
 - i) Form should change
 - b) Reference at top application if needs to be expedited and follow up after a week
 - i) They are already a priority regardless
- 4. Lien Unit (Chart on IRS.gov)
 - a) Number to call on chart for payoff
- 5. Expiration of Liens
 - a) Will automatically release so will not file
 - b) Can always file lien withdrawal (after 30 days)
 - i) This will circumvent issue
- 6. Installment Agreement
 - a) Direct Debit
 - i) Less costly to government
 - ii) Better Compliance
 - b) Additional on-line I/A capabilities @ IRS.gov
 - c) Businesses
 - i) \$25,000 or less liability and 24 month or less direct debit I/A
 - d) Will allow all expenses if I/A is 60 months or less
- 7. Offer in Compromise
 - a) If processable, 60% acceptance rate
 - b) Doubt as to Liability offers are being accepted
 - i) Need new information
 - c) Recommends sending in collateral agreement w/ OIC, if applicable
- 8. EFTPS
 - a) Recommends checking to confirm payments made
 - b) Recommending EFTPS to send payment confirmations
- 9. Trust Fund Recovery Penalty
 - a) Priority for field
 - b) Only ROs can assess TFRP
 - i) Occasionally a bankruptcy specialist can assess
 - c) Written confirmation of Non-assertion of TFRP by RO following filing of Protest
 - d) Aggressiveness with trust fund taxes
 - i) Holding refunds to make certain TFRP not being assessed
 - e) Application of payments to trust fund vs. non trust fund taxes
 - i) e.g. Federal tax deposit payments
- 10. Compliance important
 - a) Be proactive
 - b) Minimize tax years and periods
- 11. Show good faith w/ ROs to get time extensions
- 12. Excited about mention of collateral agreements in the context of OICs
- 13. Go to Irs.gov and type in "fresh start"

III. Office of Chief Counsel

A. Ellen T. Friberg, Area Counsel (Jax, FL), Office of Chief Counsel

1. Offer in Compromise
 - a) Amended OIC
 - i) Addendum
 - Should be done by IRS
 - Does not reset 24 month decision period
 - b) New form
 - i) 433-OIC instead of 433-A
2. Innocent Spouse
 - a) Will not pursue 2 year SOL for 6015(f) cases
 - i) Need to file w/n collection SOL
 - ii) Can re-apply if previously denied
 - iii) Cases in litigation will drop
3. Offshore Voluntary Disclosure Initiative (OVDI)
 - a) 2009
 - i) 15,000 OVDI
 - ii) \$2.2B in collections
 - iii) 80% closed
 - b) 2011
 - i) As of September 15, there have been 12,000
 - ii) Opt-out and Removal guide issued in June
 - Opt-out has to be in writing and irrevocable
 - Removal if unresponsive
 - Opt-out is going to look at facts and circumstances and not going to just apply willful penalty to dissuade taxpayers from opting out to avoid 25% penalty
 - c) What is protocol with Taxpayers coming into traditional program between two OVDI programs?
 - i) **Will inquire and get back**
4. Summons for electronic accounting records
 - a) Policy is not going to look at things outside of scope of exam
 - i) May look at if send voluntarily
 - ii) Revenue Agents cannot look at records themselves
 - iii) Specific area will pull out applicable records and send to Revenue Agent

END OF DAY 1

DAY 2

IV. Appeals

A. Sue Latham, Director, Tax Policy & Valuation & Mary Craca, Technical Advisor, Field Operations East

1. Case loads up and staffing staying stable
 - a) 58% collection cases

- b) Entire International Settlement Officer team on east coast
 - 2. Independence & Ex Parte
 - a) Independence
 - i) Will not participate on issue mgmt teams
 - ii) Working on how to get info w/o being in the room
 - iii) Can apply “hazards of litigation”
 - iv) Not fact finder
 - b) Ex Parte
 - i) Updating to include IMT, etc.
 - 3. Customer Service
 - a) Working to adapt to limited resources
 - 4. Updating info on website
 - 5. Dispute Resolution
 - a) LBMI
 - i) Fast track cases increasing
 - b) Looking at other ways to increase fast track
 - 6. Early issuance of Final Notice of Intent to Levy
 - a) Forcing premature CDP requests
 - i) ROs not holding for 45/90 days
 - b) Waiving CDP rights prior to Final Notice
 - i) **Case example?**
 - 7. CDP vs. CAP (Collection Appeal Process)
 - a) CAP
 - i) Administrative appeal; not provided by statute
 - ii) Standard is whether action taken is reasonable
 - iii) Try to resolve w/n 5 business days
 - iv) Face-to-Face hearings are increasing
 - Not geared towards these b/c quick responses
 - 8. Communicating coordinated issues
 - 9. Will refer technical issues to technical services
 - 10. Penalty Abatements
 - a) Reasonable Cause Abatement
 - b) Hardship – Inability to Pay
 - i) Send IRM Section to David Yeskoo
 - ii) Section 20.1.1.3.3.3 (Undue Hardship)

V. Office of Professional Responsibility (“OPR”)

A. Takisha McGee, Attorney, OPR Enforcement & Oversight Branch
(takisha.v.mcgee@irs.gov)

- 1. Independent from IRS
- 2. Focusing on Conduct
 - a) Used to take in all complaints
 - i) Complaints will now go to Return Preparer Office (“RPO”)
 - b) PTIN Appeals
 - i) New for OPR
 - c) CPE Provider Appeals

- d) CPE Exemption Appeals
- 3. Outreach to new constituents
- 4. Two Divisions
 - a) Cases come into director's office
 - b) Will then go to Legal Analysis Branch
 - c) Will then go to Operations Branch
- 5. Three Regional Offices
 - a) Locations unknown – will come out in next few weeks
- 6. Process
 - a) Pre-allegation Letter
 - i) Can reply to OPR attorney with case
 - b) Allegation Letter
 - i) If determine violation of Section 230
 - ii) 30 days to respond
 - iii) Right to conference and representation
 - Send letter of representation
 - c) Right to conference
 - i) Enforcement attorney will write up recommendation
 - d) Decision Letter/Complaint
 - i) Approved by Karen Hawkins, Director
 - e) Appeals
 - i) Administrative law judge (“ALJ”) makes initial decision
 - ii) Appellate authority
 - iii) Ability to litigate b/f federal district ct.
 - f) Sanctions
 - i) Soft Letter
 - One-time incident
 - ii) Private Letter Reprimand
 - iii) Public Reprimand
 - iv) Disbarment
 - v) Deferred Discipline Letter
 - Generally have to remain compliant for 5 years
 - g) Injunction or Disbarment by DOJ
 - i) Letter of Notification
 - ii) Answer
 - iii) Conference
 - iv) Determination
 - v) Complaint to ALJ
- 7. New Provisions of Circular 230 (effective August 2, 2011)
 - a) 10.8 – Requires PTIN
 - i) If involved substantially in preparing return
 - b) 10.36(b) – Requirement for Tax Returns or Other Forms
 - i) Firm or company standards required
 - ii) Includes OICs
 - c) Attorney or CPA does not have to test or fingerprint
 - d) 10.34(a) – Standards for Tax Returns

- i) References 6694(a) penalty
 - Not automatic referral to OPR
 - OPR takes independent review
 - o Looking at fitness to practice
 - Looks at patterns
 - ii) 6694(b)
 - Automatic referral
 - iii) Look at on case-by-case basis
- 8. Statute of Limitations for OPR
 - a) OPR vs. Lewis Hernandez; OPR vs. Baldwin
 - i) Appellate authority sets 5 year SOL from date tax return due, including any extensions
 - b) Decision w/ Craft
 - i) Applies to failure to file and pay from date return and/or payment due
 - c) Fast track cases through process if SOL coming up soon

VI. Taxpayer Advocate Service (“TAS”)

- A. Matthew Weir, Executive Director, National Taxpayer Advocate Office
 - 1. Hot Topics
 - a) Identity theft
 - b) Questionable refunds
 - 2. File Form 911 (Taxpayer Assistance Request) if any delay
 - 3. Reasonable Cause Abatement (“RCA”)
 - a) IRS just performing function and not giving result to TAS
 - i) TAS now given result
 - b) Group manager can override rejection
 - 4. OIC Campuses communicating by phone know
 - a) IRS considers revolutionary
 - 5. Campus call back not happening
 - 6. Strain in process between Congress and IRS
 - a) e.g. First-time homebuyer tax credit
 - i) No e-filing
 - b) Congress passing legislation and not difficult for IRS to implement
 - 7. No change audits very high
 - 8. “Unpostable” returns
 - a) Refunds being considered unpostable to withhold refunds
 - 9. Elimination of certain types of cases
 - a) Processing original returns unless there are economic hardships or collection issues
 - b) Where there is not much they can do
 - c) This is temporary

VII. Legislative Update

- A. Floyd Williams, National Director, Legislative Affairs
 - 1. Waiting on Debt Ceiling Supercommittee Nov. 23

2. Congress does not want to provide for refundable credits and then not be able to fund
3. Identity theft
4. Debt Ceiling
 - a) 2.4T increase
 - i) 400B increase
 - ii) 500B increase
 - Congress can disallow by 2/3 vote
 - b) Supercommittee must give approval for next 1.5T increase
 - i) 6 Republicans and 6 Democrats
 - ii) Agreement by Dec. 23
 - c) Everything on table (includes taxes)
5. Does not think tax reform before next election
6. Corporate and Rental reporting requirements repealed
7. Proposed additional payroll tax reductions
8. Bush tax cuts
 - a) Depends on election
9. Appropriation Bills
 - a) 1.5% cut
 - b) Another cut expected
 - c) House passed 5% and Senate 4% reduction for IRS
 - i) Worse customer service
 - ii) Less collection
10. Amendment to disclosure for identity theft is possible
11. Tax code simplification possible

VIII. LBI (formerly LMSB)

- A. Thomas Vidano, Special Counsel, Office of Chief Counsel; Kathy Robbins, Director of International Business Compliance
 1. Transfer Pricing
 - a) Top compliance issue
 - b) Reorganizing transfer pricing department
 - i) Advance Pricing Agreements
 - Typically unilateral: i.e. just have to get from U.S.
 - Can get bilateral
 - ii) Field examiners
 2. Knowledge business
 3. Specialty area
 4. Looking at transactions from Taxpayer's perspective
 - a) Big culture shift
 - i) Has been more responsive and now looking at when and why
 - ii) How do parts work together
 5. Working on training and collaboration
 - a) Transfer pricing affects a lot of other areas

- b) Establishing networks so specialists across country can communicate together
- c) More consistency
- d) Better use of resources
 - i) Want to resolve issues early
- 6. Intangible abuse
 - a) Treasury Reg. 1.42-7 will hopefully cure abuse by tech companies
 - i) Lost a lot cases b/f these regs came out in 2008
 - b) Easy to abuse
- 7. Will be additional information sharing between countries
- 8. Integrated International Program
 - a) Individuals
 - i) Inbound
 - ii) Outbound
 - b) Companies
 - i) Inbound
 - ii) Outbound
 - c) Inbound vs. Outbound
 - i) Inbound – International Company w/ U.S. subs
 - ii) Outbound – U.S. Company w/ international subs
- 9. Exchange of Information between countries
 - a) A lot of collaboration

IX. Criminal Investigation (“CI”)

- A. Julio LaRosa, Director of Field, Operations East Area, CI
 - 1. 2011 OVDI
 - a) 12,000 Taxpayers
 - b) Viewed as successful
 - c) \$500M collected so far
 - d) Procedure
 - i) Receives request and give pre-clearance
 - ii) Receives Application
 - iii) Preliminary Acceptance
 - e) No involvement w/ penalty application
 - f) Only gets back involved if referral
 - g) Not eligible if:
 - i) Not voluntary
 - already known by IRS or connected to somebody known by IRS
 - inquiry vs. exam
 - “quiet” disclosures
 - ii) Illegal income
 - 2. Reviewing information from 2009 and 2011 OVDI
 - a) Next countries are based on information made available
 - b) Following \$\$\$ trail
 - 3. Trust Fund Referrals

- a) Turns on willfulness
 - i) Lavish lifestyles more likely
 - ii) Taking withholding on individual tax returns
- 4. CI Agent prepares report
 - a) Includes tax loss
 - i) Trace funds
 - b) Does not include sentencing guidelines
- 5. Successful 90% of time
- 6. Very case selective
 - a) See criminal enforcement @ www.irs.gov
- 7. Focus is on return preparers and identity theft

X. SB/SE Exam

A. Daniel Gri, Group Manager

- 1. Go to www.irs.gov for video portals
- 2. Revenue Agents now have Quickbooks on computer
 - a) Can now download directly
- 3. Preparer registration requirements
 - a) PTIN
 - i) Letters sent in July to 100k preparers who did not have yet
 - b) Fingerprints
 - c) CPE
- 4. Nine (9) minimum income probes
 - a) 1040s
 - i) Cash T analysis
 - Sources of cash vs. Uses of cash
 - Do b/f even pick up phone by looking at information available
 - Income vs. mortgage interest
 - Include personal living expenses from Bureau of Labor Statistics (“BLS”)
 - o May also get actual numbers
 - ii) Interview taxpayer or knowledgeable POA
 - e.g. bookkeeper or controller
 - will get summons if do not acquiesce
 - iii) Tour of business
 - Inventory
 - Bookkeeping operations
 - iv) Internal Controls
 - Multiple employees
 - Need reliance on the books
 - Accounting system
 - v) Reconcile books to return
 - Important to have books that are reliable
 - vi) Test original gross receipts
 - vii) Analyze personal and business bank accounts

- viii) Business ratio analysis
- ix) E-commerce activity

XI. Closing Remarks

A. Jeffrey Kess and Hope Clark

20.1.1.3.3.3 (12-11-2009)
Undue Hardship

1. An undue hardship may support the granting of an extension of time for paying a tax or deficiency (Form 1127, *Application for Extension of Time for Payment of Tax*). Treas. Reg. 1.6161-1(b), provides that an undue hardship must be more than an inconvenience to the taxpayer. The taxpayer must show that they would sustain a substantial financial loss if **forced to pay** a tax or deficiency on the due date.
2. The extension of time to pay does not provide the taxpayer with an extension of time to file. Nor does the extension of time to pay relieve the taxpayer of any appropriate penalties (see IRM 20.1.2.1.9).
3. Undue hardship generally **does not** affect a person's ability to file and therefore would not provide a basis for penalty relief in a failure to file situation. However, each request must be considered on a case-by-case basis. Undue hardship may establish reasonable cause for failure to file on magnetic media, under Treas. Reg. 301.6724-1. See IRM 20.1.7, *Information Return Penalties*.
4. Undue hardship may also support relief from the addition to tax for failure to pay tax if the explanation for the noncompliance supports such a determination. However, the mere inability to pay **does not** ordinarily provide the basis for granting penalty relief. Under Treas. Reg. 301.6651-1(c), the taxpayer must also show that they exercised ordinary business care and prudence in providing for the payment of the tax liability.
 - A. The taxpayer may claim that enough funds were on hand, but as a result of unanticipated events, the taxpayer was unable to pay the taxes.
 - B. Consider an individual taxpayer's inability to pay a factor when considering penalty relief if the taxpayer shows that, had the payment been made on the payment due date, undue hardship (as defined in Treas. Reg. 1.6161-1(b)) would have resulted. In the case where a taxpayer files bankruptcy, consider inability to pay a factor if the insolvency occurred before the tax payment due date.
5. If a payroll was met, taxes were withheld and should be available for deposit. Employers must reserve money withheld from employees' wages in trust until deposited. The employer should not use the money for any other purpose. Undue hardship does not support relief from the IRC section 6672, Failure to Collect and Pay Over Tax, or Attempt to Evade or Defeat Tax (Trust Fund Recovery Program).
6. Information to consider when evaluating a request for penalty relief includes, but is not limited to, the following:
 - When did the taxpayer know they could not pay?
 - Why was the taxpayer unable to pay?
 - Did the taxpayer explore other means to secure the necessary funds?
 - What did the taxpayer supply in the way of supporting documentation, such as copies of bank statements?
 - Did the taxpayer pay when the funds became available?
7. See Exhibit 20.1.1-3, *Penalty Reason Code Chart*.