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U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS

ON

TAXPAYER RIGHTS PROPOSALS

MARCH 25, 2003

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COMMITTEE ON WAYS AND MEANS

BILL THOMAS, California, *Chairman*

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ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE CONTACT: (202) 225–1721
March 12, 2003
No. OV-2

Houghton Announces Request for Written Comments on Taxpayer Rights Proposals

Congressman Amo Houghton (R–NY), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the Subcommittee is requesting written comments for the record from all parties interested in legislative proposals concerning taxpayer rights, including those contained in the National Taxpayer Advocate's 2001 and 2002 Annual Report to Congress, reports by the U.S. Department of the Treasury and Joint Committee on Taxation (JCT) mandated by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA '98) (P.L. 105–206), and the President's fiscal year 2004 budget proposal.

BACKGROUND:

Congress passed the first "Taxpayer Bill of Rights" in 1988. It expanded taxpayer protections in the "Taxpayer Bill of Rights 2" in 1996 and, in that legislation, established the National Commission on Restructuring the IRS. The Restructuring Commission's June 1997 report contained recommendations that were the basis for RRA '98. The RRA '98 contained many more taxpayer rights guarantees; it directed the IRS to place a greater emphasis on serving the public and meeting taxpayers' needs.

The RRA '98 established the Office of the Taxpayer Advocate, and it requires the National Taxpayer Advocate to submit an annual report to Congress that contains legislative recommendations to resolve problems encountered by taxpayers. The Taxpayer Advocate's 2001 and 2002 Reports to Congress contain many such recommendations.

Also, pursuant to RRA '98, the JCT and the Treasury Department submitted separate reports to Congress recommending legislative options to reform the penalty and interest provisions, and the confidentiality and disclosure provisions of the Internal Revenue Code.

Finally, the President, in his fiscal year 2004 budget proposal, has made several recommendations to improve tax administration. The Subcommittee is seeking comments on the legislative recommendations contained in all of the aforementioned documents and on any other proposal that relates directly to the protection of taxpayer rights or the administration of Federal tax laws.

In announcing this request for comments, Chairman Houghton stated, "I look forward to hearing from taxpayers and tax professionals about ways in which we can improve the administration of our tax laws. The combination of written comments and testimony at this year's hearing will permit the Subcommittee to develop better legislation to guarantee taxpayer rights."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit written comments for the record should send it electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to (202) 225–2610, by close of business, Tuesday, March 25, 2003. **Please Note:** Due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to (202) 225–2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

American Institute of Certified Public Accountants
Washington, DC 20004
March 25, 2003

The Honorable Amo Houghton
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1136 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Houghton:

The American Institute of Certified Public Accountants commends the Subcommittee on Oversight for the panel's long-standing support for proposals designed to improve the tax administration process and protect the rights of American taxpayers. In this regard, we are pleased to have the opportunity to offer comments on taxpayer rights proposals as requested by the Subcommittee's March 12, 2003 advisory. Our comments herein specifically address a number of the taxpayer rights and tax administration provisions contained in (H.R. 5728) the Tax Administration Reform Act of 2002. Although H.R. 5728 passed the House of Representatives in 2002, it did not become law. We anticipate that these same provisions are likely to receive serious consideration by the Committee on Ways and Means in 2003.

The AICPA is the national, professional organization of certified public accountants comprised of more than 350,000 members. Our members advise clients on federal, state, and international tax matters, and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

H.R. 5728 contains a number of provisions designed to promote taxpayer rights and tax administration. We would like to offer comments on the following provisions of H.R. 5728 that we consider particularly significant to tax practitioners and their clients; specifically the provisions involving: (1) an April 30 due date for electronically filed returns; (2) low income tax clinics; (3) penalties and interest; (4) the collection process; and (5) a better means of communicating with taxpayers.

1) EXTEND THE DUE DATE FOR ELECTRONICALLY FILED RETURNS

Section 205 of H.R. 5728 would provide an April 30 due date for individual income tax returns that are e-filed. The AICPA supports electronic filing and wants it to work well for all taxpayers. We applaud the creativity of this proposal to encourage e-filing, but believe that the same incentive could be achieved by deferring the processing of electronic payments on e-filed returns until April 30, without changing the due date. This would avoid the complexities and problems, detailed below, of a separate e-file due date.

The Incentive to E-File

Most taxpayers who file electronically do so to accelerate the processing of refunds. Treasury's proposal would provide a similar cash-flow benefit for "tax-due" returns by allowing taxpayers to hold on to their cash until April 30. It is difficult to predict how much of an incentive this delay would provide, given that the difference between an immediate charge on April 30 and the slower processing of checks mailed on April 15 might result in additional "float" of less than a week. However, the delayed due date would at least remove the e-filing disincentive of immediate electronic payment on April 15.

This cash flow incentive is an important factor in the e-filing decision process because the public and practitioners continue to have concerns over electronic filing. Predominant among these concerns are that, contrary to IRS advertising: (1) e-filing does not reduce tax paperwork for taxpayers and practitioners; (2) computer-prepared paper returns are no less accurate than those submitted electronically; and (3) e-filing is more—not less—expensive. Finally, there are lingering concerns about privacy and the government's ability to collect more information from electronically filed returns than from paper returns.

In light of these considerations, we believe that deferring processing of electronic payments on e-filed returns until April 30 would achieve the same cash flow incentive to e-filing as would a delayed filing date.

Extended Due Date Issues

Return Processing Problems

Under H.R. 5728, taxpayers would gain the maximum cash-flow benefit by filing on April 30. This last-day (and potentially last-minute) rush of returns will cause processing problems for practitioners and the IRS, and could cause some returns to be filed late as a result of processing log-jams. By processing electronic payments from e-filed returns on April 30—no matter when the return was filed—the IRS and practitioners could process electronically filed tax-due returns normally through the tax season and still give the maximum incentive to e-file.

Estimated Tax Payment Problem

H.R. 5728 does not extend the due date for estimated payments, although crediting of overpayments of prior years taxes is considered timely through April 30 on e-filed returns. Without a general extension of the estimated payment due date, taxpayers might have to substantially complete an e-filed tax return by April 15 in order to calculate and make timely estimated payments within the safe harbor based on prior year's taxes. Also, by allowing overpayments on April 30 e-filed returns to be timely credited towards estimated taxes that would otherwise be due on April 15, there may be different due dates for some federal and state estimated tax payments (see the section below on state tax conformity).

Federal Extension Problems

As an alternative to filing their individual returns on April 15, taxpayers may request an automatic four-month filing extension. The proposal does not address whether this automatic extension would be lost if a taxpayer who intended to e-file by April 30 was unable to do so and had not filed an extension by April 15. This could occur, for instance, if the return could not be processed electronically for some reason beyond the taxpayer's control, for example, the taxpayer died between April 15 and April 30, or there was a processing glitch such as where someone else erroneously filed using the taxpayer's social security number or where an error is made in copying an employer identification number. Without an additional opportunity to file an extension before May 1, prudent taxpayers and practitioners would file extension requests on April 15 even if they plan to complete the return electronically by April 30. This could result in the IRS receiving an extension request for every e-filer expecting to take advantage of the later due date. Finally, if a taxpayer could file for an automatic e-filing extension on April 30, the legislation should clarify that the extended due date would be August 15, not August 30 or 31. By allowing deferred processing of payments for e-filed returns instead of a later due date, these problems are avoided.

Deferring processing of electronic payments would also give the government an opportunity to encourage e-filing for extended individual returns. If the government deferred processing of electronic payments for 15 days where an extended return is filed electronically, this would provide a powerful cash-flow incentive to e-file many extended returns. Again, the IRS could easily accomplish this change, without adding complexity or changing the tax law. The proposal, as currently written, provides no e-filing incentive for extended returns.

State Tax Conformity

The change in the due date for federal e-filed returns causes a number of potential problems for taxpayers and state and local governments, unless these governments conform their laws to the April 30 due date for e-filed returns.

- Taxpayers would have to prepare their federal returns by April 15 in order to prepare their state returns.
- If taxpayers extend their state returns because they haven't completed their federal return, states could see a substantial increase in the number of extensions.
- Many states require a copy of a federal extension request as part of a state extension request; April 30 e-filers could not comply with that requirement if they did not request a federal extension.
- Taxpayers could erroneously assume that their electronically filed state tax return is due on the same day as the federal return, resulting in state late-filing penalties.
- The proposal allows timely crediting of overpayments of prior year's taxes against current year's estimated taxes on April 30 for e-filed federal returns. Either states would have to conform their rules or taxpayers would have to pay state estimated taxes by April 15 to avoid state late payment penalties.

Thus, unless states change their laws to conform with an extended federal due date for e-filed returns, much taxpayer confusion and state tax filing complications could result. Implementing this proposal for the next filing season would not allow enough time for most state legislatures to change state laws in time to avoid these problems. These state tax conformity issues would not arise if the federal government simply defers processing of electronic payments until April 30 rather than extending the due date.

Complexity

H.R. 5728 would create different rules—based on filing method—for return due dates, tax payments, and filing extensions. Many of these rules are already complex. Multiplying the number of filing rules would add a layer of confusion. Deferring electronic payment processing rather than extending the due date offers a much simpler approach to promoting e-filing.

Maintain April 15 as the Well-Known Filing Date

April 15 has been engraved into our national psyche as the date by which we must take some action on our taxes. Although one intent of this proposal is to help people who have trouble getting organized by April 15, we suspect that further delay in getting organized may result, yielding one last haven for procrastinators.

In general, tax practitioners would prefer a firm deadline, which is not easily bypassed, to lend some finality to the annual crush of tax return work. Practitioners do not relish extending their busy season 15 days and creating a last minute April 30 push to take maximum advantage of the "float" on tax-due returns.

We believe that returns should continue to be due by April 15, with deferred processing of electronic payments on e-filed returns. This would keep April 15 as the date by which taxpayers must address their tax obligations, but still provide e-filing incentives.

The AICPA supports efforts to make e-filing more appealing to taxpayers, and believes that this proposal is helpful. However, we believe that deferred processing of payments for e-filed returns would provide the same incentive and would avoid the complexities and return processing problems of a separate due date for e-filed returns. The IRS, state governments, and practitioners could process returns more easily, and taxpayers would be better served.

2) LOW-INCOME TAXPAYER CLINICS

Section 106 of H.R. 5728 would increase federal funding to low-income taxpayer clinics (LITCs), but limit funding to clinics that represent taxpayers in controversies before the IRS. This change in the law has already been imposed administratively by the IRS, after applications for the current year had already been submitted, leaving many low-income preparation clinics without expected matching funds.

Although assisting low-income taxpayers with controversies is an important and necessary function, it requires an intensive focus on the issues facing a fairly limited number of taxpayers. Clinics that prepare "routine" returns provide broader, more basic compliance assistance to many more individuals. In some Congressional districts, citizens don't have the language and math skills or the convenient access to the government that allows them to comply with our complex tax requirements. VITA programs are helpful, but they are seasonal, often changing location from year to year, with taxpayers not knowing where to go and whether they will find their records there or anyone who is familiar with their return. VITA is administered by the IRS, with some taxpayers suspecting whether the program serves their best interests.

We urge Congress to fund LITCs that offer return preparation assistance, because without this assistance (1) low-income taxpayers will struggle—and often fail—to file correct returns; (2) low-income wage earners will not receive tax benefits Congress intended for them; and (3) the IRS will expend more resources on compliance problems.

Return Preparation Complexity

Tax law complexity hits low-income taxpayers particularly hard. Often these taxpayers lack the education and skills to prepare their own tax returns. For many, English is their second language; tax forms and instructions are difficult enough for those native English speakers.

Low-income taxpayers cannot afford to hire the return preparers that over half of all American taxpayers use to cope with tax return complexity. LITCs can and do supply tax compliance assistance not otherwise available to low-income taxpayers. IRS taxpayer assistance alone cannot provide the quality and quantity of assistance needed. Even commercial return preparers who try to serve the low-income market by keeping their prices down cannot devote much time to each return and often supplement their revenues by marketing refund anticipation loans which low-income taxpayers can ill-afford.

Loss of Congressionally Intended Benefits

Without low-cost professional assistance, many low-income families may not even learn about the benefits that Congress intended to help them, like the child tax credit or the earned income tax credit (EITC). The EITC's complexities deter some low-income taxpayers; others try to claim the EITC on their own, but make errors that can lead to penalties and disqualification. In attempting to find help, still other taxpayers fall victim to tax scams that have plagued the EITC.

Congress implemented the EITC to offset the regressivity of income and employment taxes on low-income wage earners, and it can make a real difference in the quality of life for low-income families. Support for LITCs that prepare returns will facilitate these complex filings and get the benefit into the hands of the working poor who need it most.

Increased Cost of Administration

LITCs reduce the IRS's administrative burden by helping taxpayers prepare "clean" returns that can be processed without delays, missing information, or misclaimed benefits. Professionals who work with clinics are subject to standards of conduct that help assure honest returns and limits controversies.

Thus, LITCs help low-income taxpayers receive the intended tax benefits, while helping to prevent fraud and errors. By reducing the IRS burden in processing these returns, LITCs strengthen the tax system and allow the Service to focus on more productive issues. Congressional funding of LITCs is very effective. In order to qualify for federal funds, LITCs must solicit private matching donations and mobilize volunteer professionals.

The AICPA supports the remainder of H.R. 5728, Section 106, which would increase LITC funding and authorize Treasury and the IRS to "promote the benefits and encourage the use of LITCs. We believe that Congressional efforts on behalf of low-income wage earners would be most effective by continuing support for low-cost, professional return preparation services for those near the bottom of America's economic ladder.

3) PENALTIES AND INTEREST

Estimated Tax Penalty

Interest Charge and Threshold

H.R. 5728, Section 301 would modify the current failure-to-pay estimated tax penalty by (1) converting the current estimated tax penalty into an interest provision for individuals, estates, and trusts; (2) increasing the threshold for estimated tax underpayments from $1,000 to $2,000; and (3) authorizing a simplified averaging method for determining whether the estimated tax underpayment threshold is met.

The AICPA supports converting the estimated tax penalty into an interest provision for individuals, estates, and trusts. In addition, we also recommend that the legislation be amended to provide for conversion of the estimated tax penalty into an interest provision for corporations. Conversion of the estimated tax penalties into interest charges should result in a more accurate characterization since the penalties are essentially fees for the use of money. We also support increasing the estimated tax penalty threshold to $2,000 for individuals, and enacting the simplified averaging method.

Rate

Section 301 would apply only one interest rate per underpayment period—the rate applicable on the first day of the quarter in which the payment is due. Currently, if interest rates change while an underpayment is outstanding, separate calculations are required for the periods before and after the interest rate change. Having only one interest rate apply per underpayment period would end the potential for multiple interest calculations occurring within one estimated tax underpayment period. The AICPA supports this provision as simplifying the computations.

Underpayment Balances

Section 301 would also simplify the calculation of estimated tax by (1) eliminating the requirement to track each underpayment separately; and (2) making underpayment balances cumulative. Under this proposal, taxpayers would no longer need to track each outstanding underpayment balance until the earlier of the date paid or the following April 15. The AICPA supports this provision as simplifying the computations.

Leap Year Issue

Under Section 301 of the legislation, a standard, 365-day year would be established for calculating estimated tax penalties. Current IRS procedures require separate calculations when outstanding underpayment balances extend through a leap year. The AICPA supports this provision as simplifying the computations.

Exclude Interest on Individual Federal Income Tax Overpayments

H.R. 5728, Section 302 generally provides for an exclusion from gross income of the interest paid to individuals by the federal government on overpayments of tax. The AICPA believes this provision is a constructive proposal by attempting to provide equivalent effective interest rates on underpayments and overpayments for individuals.

Interest Abatement

H.R. 5728, Section 303 expands the circumstances under which interest on a tax underpayment may be abated to include (1) any erroneous refund not caused by the taxpayer; and (2) underpayments attributable to erroneous written advice furnished by the IRS. The AICPA supports this provision.

Deposits to Suspend Interest

Section 304 of the bill permits taxpayers to limit their underpayment interest exposure in a tax dispute—without affecting their ability to be heard in Tax Court—by allowing them to make cash deposits to suspend the running of interest. These accounts are intended to help taxpayers better manage their exposure to underpayment interest without requiring them to surrender access to their funds or requiring them to make a potentially indefinite-term investment in a non-interest bearing account. Further, under this proposal generally, taxpayers would be permitted to withdraw the deposited amount with interest or to allocate and apply it to tax underpayments.

The AICPA supports the proposal in concept. We believe that the initiative blends some good features of several current law approaches to avoid deficiency charges.

Modifying Interest Netting Rules for Individuals

There are several special rules under current law whereby taxpayers and the government are given grace periods to take certain actions without accruing additional interest charges. For example, the government is generally provided 45 days to process refund claims without a requirement to pay interest on the overpayment of tax.

H.R. 5728, Section 305 modifies current law by applying the interest netting rules to individual taxpayers without regard to this 45-day period.

We support the provision on interest netting, as the measure is designed to ensure that individual taxpayers are not charged interest on amounts where no true liability actually exists. Section 305 should mitigate taxpayer resentment over the imposition of interest on equivalent outstanding amounts under the pretext that a true liability exists where none does.

Waiving Certain Penalties for First-Time Unintentional Minor Errors

Under Section 306 of the bill, the IRS is permitted to waive, once per taxpayer, the IRC Section 6651 failure-to-file or failure-to-pay penalties when an individual taxpayer has committed unintentional, minor errors. In considering this waiver, the IRS would take into account: (1) the taxpayer's compliance history; and (2) the likelihood that imposing the penalty would be grossly disproportionate to the action or expense necessary to have avoided the error.

The AICPA supports this provision. In addition, we recommend expanding this waiver option to cover other penalties, particularly those that are mechanical in nature like the failure-to-deposit penalty. We believe that this penalty safe harbor would encourage and create vested interests in compliance, because a history of compliance would be more likely to result in relief. Also, expanding this provision would reduce the time spent by both the Service and taxpayers on proposing an assessment, initiating and responding to correspondence, and negotiating subsequent abatement.

Frivolous Tax Returns and Submissions

Under current law, the IRS has the authority to impose a $500 civil penalty against individuals who file frivolous original or amended returns. Section 307 of H.R. 5728 would modify present law, regarding submissions that raise frivolous positions or that are intended to delay or impede tax administration, by increasing the frivolous filing penalty to $5,000 and by expanding the penalty's scope to cover collection due process hearings, installment agreements, offers-in-compromise, and taxpayer assistance orders. The bill would also require the IRS to publish a list of positions, arguments, requests, and proposals that the Service has determined to be frivolous.

The AICPA supports increasing the frivolous filing penalty to $5,000 and the proposed expansions in its application. In fact, our February 6, 2003 letter to (Acting) Commissioner Robert E. Wenzel states that this penalty proposal is potentially preferable to the regulatory proposal designed to control frivolous offer-in-compromise filings by assessing a user fee. Nevertheless, we would not want the frivolous penalty proposal to be used to stifle—overtly or inadvertently—legitimate taxpayer submissions whether that submission is an offer-in-compromise, a filing involving a collection due process hearing, an installment agreement, or a taxpayer assistance order.

Although we are pleased that the proposal would require the IRS to publish guidance regarding what constitutes a frivolous position, we recommend expanding this requirement to also provide guidance regarding the meaning of the legislative language (from last Congress) involving "a desire to delay or impede the administration of Federal tax laws." It is particularly critical that the guidance regarding what constitutes "a desire to delay or impede the administration of Federal tax laws" be restricted to truly frivolous positions or actions. Such guidance would go along way to ameliorate concerns about the potential misuse of the expanded penalty's application, especially if the IRS consults with the practitioner community in the development of such guidance.

4) COLLECTION PROCESS

Partial-Payment of Tax Liability in Installment Agreements

H.R. 5728, Section 101 clarifies that the IRS is authorized to enter into installment agreements that do not require full payment of the taxpayer's liability over the life of the agreement. Further, the bill requires the Service to review these partial-payment installment agreements at least every two years.

The AICPA supports this proposal because it gives the IRS more tools for settling taxpayer accounts. However, we would have reservations about the proposal if the initiative were drafted to also require an extension of the collection period.

Extending Time Limit for Contesting IRS Levies

Under current law, a taxpayer is generally required to bring an action for wrongful levy within nine months of the date of the IRS levy. H.R. 5728, Section 102 would extend the period to contest a levy from nine months to two years. This proposal is contained as a recommendation in the National Taxpayer Advocate's Fiscal Year 2001 Annual Report to Congress (dated December 31, 2001). The AICPA supports this initiative.

5) BETTER MEANS OF COMMUNICATING WITH TAXPAYERS

Section 221 of the legislation requires the Treasury Inspector General for Tax Administration to issue a report to Congress on ways to improve IRS communications with taxpayers, particularly focusing on technological advances such as e-mail and fax communications. This provision is consistent with our long-standing support for (1) fostering electronic communications between the IRS, taxpayers, and tax practitioners; and (2) a dramatic increase in IRS use of e-mail and fax communications as alternatives to regular mail.

*****

Thank you for considering the AICPA's views on H.R. 5728. Should you need any further feedback on our positions regarding this bill or any other taxpayer rights initiative, please do not hesitate to contact us. If you have any additional questions, please contact me at (202) 414–1705 or robert.zarzar@us.pwcglobal.com; William R. Stromsem, AICPA Director, at (202) 434–9227 or wstromsem@aicpa.org; or Benson S. Goldstein, AICPA Technical Manager, at (202) 434–9279 or bgoldstein@aicpa.org.

Sincerely,

Robert A. Zarzar
Chair
Tax Executive Committee

cc:
House Ways and Means Committee Members
Senate Finance Committee Members
IRS Oversight Board Members
Pam Olson, Treasury Deputy Assistant Secretary-Tax Policy

Statement of David Marzahl, Executive Director, Center for Economic Progress, Chicago, Illinois

Mr. Chairman and Members of the Subcommittee:

My name is David Marzahl. I am submitting written comments in my capacity as Executive Director of the Center for Economic Progress (the Center). The Midwest Tax Clinic (the Clinic) is a program of the Center, a 501(c)(3) corporation in Chicago, Illinois. The Clinic provides: (1) pro bono representation to low-income Illinois taxpayers in federal and state tax controversies; (2) English as a Second Language (ESL) outreach programs to educate taxpayers on their rights and responsibilities in conjunction with their federal and state tax filing obligations; and (3) limited tax preparation assistance as needed in cases where prior year returns were filed incorrectly, incompletely, or otherwise in need of modification before resolution of the case or controversy may be reached.

I sincerely appreciate the opportunity to submit written comments for the record concerning taxpayer rights, particularly the rights of low and moderate income taxpayers. I submit these comments on behalf of my colleagues at the Clinic, the Tax Counseling Project (the Project), and the Center as a whole. My comments will primarily touch upon the National Taxpayer Advocate's 2002 Report to Congress, on the President's fiscal year 2004 budget generally and on our recommendations for improvements to the current EITC program, particularly the soon to be instituted EITC precertification program.

BACKGROUND ON THE CENTER FOR ECONOMIC PROGRESS AND THE MIDWEST TAX CLINIC

The Clinic achieves its objectives with the assistance of volunteer attorneys, accountants, tax professionals and an in-house staff that is bi-lingual, including Salvador Gonzalez, the Clinic Director, who is a CPA and MBA. In fiscal year 2002, the Clinic was awarded funding under the Low Income Taxpayer Clinic Grant Program, instituted by IRC § 7526. The Clinic represents approximately 200 individual cases a year for clients with income at or below 250% of the federal poverty level.

In addition, the Clinic relies greatly on its partnership with the Center, chiefly due to the Center's lead program, the Tax Counseling Project (the Project). Launched in 1994 to meet the tax preparation needs of homeless individuals, the Project is one of the nation's largest free statewide tax preparation services for working families. Each year, trained volunteers set up shop at community colleges, libraries, banks, and other locations to provide free tax preparation assistance for low-income clients. In 2002, more than 800 volunteers prepared 27,000 federal and state income tax returns. The Project brought back over $19.5 million in refunds to working families. Moreover, the Project's volunteers can boost the incomes of working poor families up to 35% by helping them claim the federal Earned Income Tax Credit (EITC). Many of the families served are making the transition from welfare to work. The Project currently receives funding from state, city, and private sources.

The Clinic counts its success due to the necessary relationship maintained with the Project. It is often the case that a taxpayer must complete or amend prior year returns in order to begin work toward resolution of their tax controversy. During tax season, the Clinic is able to refer taxpayers to one of the Project's 25 Illinois tax sites. Thus, the taxpayer is able to have prior year returns completed or amended while they wait and the Clinic is able to free up resources to concentrate on preparing Offers-in-Compromise (OIC), Audit Reconsiderations and other important services. Similarly, the Project is able to refer clients to the Clinic and referrals run the gamut from ITIN applications, prior EITC denials, and tax deficiencies requiring OICs.

Following are my comments on the aforementioned points:

- the National Taxpayer Advocate's 2002 Report to Congress;
- the President's fiscal year 2004 budget generally; and
- our recommendations for improvements to the current EITC program, particularly the soon to be instituted EITC precertification program.

FY 2002 NATIONAL TAXPAYER ADVOCATE REPORT TO CONGRESS

Free U.S. Individual Income Tax Return Preparation

The National Taxpayer Advocate recommends that "Congress authorize and appropriate funding for a grant program, modeled after the Low Income Taxpayer Clinic program, for community-based coalitions to provide low income taxpayers with free tax preparation and education about and opportunities to bank and save their tax refunds." (Topic #13, Most Serious Problems section, p. 103) In addition, the Report's preface discusses low-income taxpayer reliance on Refund Anticipation Loans (RALs) and the correlation between reliance on RALs and being *unbanked,* where taxpayers lack a bank account in which to receive a direct deposit. The preface states that RALs will not disappear until the IRS is able to return refunds within two to four days if low-income taxpayers are banked.

The Center has a financial literacy program, First Accounts, which recognizes this very key relationship between securing a bank account and averting the hazards of RALs, which impose extraordinarily high interest rates upon a population that can afford them the least. The Center fully supports the recommended initiative for the funding of free tax preparation and financial education. Moreover, the Center is a testament to the success that can be achieved when community-based coalitions provide low income taxpayers with free services they would otherwise be unable to access. The Center, via the Tax Counseling Project, has provided low income families with free tax preparation assistance and been instrumental in getting refunds to taxpayers without the need for RALs by getting families banked. The Center has helped families pull themselves out of poverty and into their own homes by partnering with organizations such as the North Lawndale Collaborative which offers Individual Development Accounts (IDAs), where refunds deposited for the purpose of saving a home are matched 2 to 1. While quite proud of these accomplishments, we still recognize the need for more community-based programs across the nation, precisely why increased funding for free tax preparation and financial education programs for low income taxpayers is absolutely crucial.

Regulation of Federal Tax Return Preparers

As the 2002 NTA Report states, there are no national standards that a person is required to satisfy before presenting him or herself as a federal tax preparer and selling tax preparation services to the public. So used car dealers can and do prepare income taxes for taxpayers to use their refunds "as down payments toward automobiles, preparers in check-cashing storefronts charge pay-day loan rates for refund loans and disappear without a trace after April 15th, and preparers in migrant or immigrant communities get a percentage fee of any (incorrect) refund. Each of these preparation outlets provides a product, at a high cost to taxpayers who do not always have strong bargaining positions or additional preparation options. The high profit margin on tax return-related products, including refund anticipation loans, attracts legitimate and illegitimate preparers alike. To date, the IRS has not launched an effective enforcement initiative against the illegitimate preparers." (Legislative Recommendations, Section Two p. 225)

The Center has regrettably seen cases where taxpayers, turning to the Tax Counseling Project after dealing with unscrupulous tax preparers, are then referred to the Clinic when it is discovered that the preparer has absconded with all or part of their tax refund and left them with a heinous tax mess to be cleared up with the IRS. We have seen cases where over 15 families were brave enough to step forward, file police reports and the guilty party (of the "kitchen table preparer" variety) was prosecuted by the State's Attorneys office, tried in criminal court and after pleading guilty, walked with one year misdemeanor probation and no fine. The NTA Report cites that IRC § 6694(a) "imposes a $250 penalty where a preparer takes a position on a return or refund claim but knew or should have known that there was 'not a realistic possibility of being sustained on its merits' and that preparer is subject to a $1,000 penalty if the understatement is attributable to the preparer's willful attempt to understate the tax liability or is due to the preparer's reckless or intentional disregard of rules or regulations. IRC § 6694(b)" However, the Report also clarifies that the "IRS rarely assesses this penalty." (citing Office of Professional Responsibility, August 2002, NTA Report, p. 220).

Experiencing first hand the havoc unscrupulous unenrolled tax preparers wreak on often unsophisticated, low income individuals who are merely trying to comply with their federal and state tax obligations, regulation of unenrolled tax return preparers would make monumental strides in curbing the dishonesty and fraud initiated upon innocent taxpayers by unlawful preparers. The taxpayer outreach campaign suggested in the NTA Report will also prove extremely helpful in alerting individuals on the importance of retaining the services of a licensed attorney, CPA, enrolled agent, IRS VITA program volunteer, or other similarly authorized programs or regulated preparers for tax return preparation.

EITC Recertification Compounds Taxpayer Burden

The NTA Report states that "taxpayers experience a multitude of problems when they try to recertify their eligibility for the EITC in years after the credit has been disallowed. These problems include: (1) EITC disallowance letters do not give taxpayers an explanation of the documentation necessary to establish EITC eligibility in subsequent years; (2) A blank Form 8862, Information to Claim Earned Income Credit After Disallowance, is not provided at the end of the process; rather, the taxpayer must seek out the form independently; (3) The timing of recertification audits negatively impacts the EITC claims made by the taxpayers for subsequent years; (4) Taxpayers mistakenly receive EITC math error disallowance notices and requests to file the Form 8862 in a subsequent year, because the IRS does not remove recertification indicators from taxpayers' accounts when warranted; (5) The Form 8862 does not advise the taxpayers that the recertification process will delay any refund; (6) The information that taxpayers are required to provide on the Form 8862 is not used in the examination recertification process; and (7) the IRS is not meeting contact timeframes promised in IRS letters. (NTA Report to Congress, Most Serious Problems, Problem Topic #11, p. 81)

The Center serves low income taxpayers who work hard and rely on their yearly EITC refund to pay bills and otherwise make ends meet. The Center has seen an increased number of individuals who qualify for the EITC experience undue delays in receiving the EITC refund. As the Report states "too many low income taxpayers struggle to determine EITC eligibility and even when their determinations are correct, they may not be able to make their cases under current processes unless they seek judicial intervention." (NTA Report, Most Litigated Tax Issues, Issue #5, p. 326) It is simply unfair that taxpayers of limited economic means must seek out professional representation to prove their entitlement to a credit that is far too complex to maneuver without assistance. The recertification process, and the precertification process (discussed below), will continue to place a great burden on low income taxpayers, many of them single parents raising children, who do not possess the resources, literacy level or sophistication required to unquestionably prove EITC eligibility.

PRESIDENT BUSH'S FY 2004 BUDGET

"President Bush's budget proposes new eligibility requirements that would make it more difficult for low-income families to obtain a range of government benefits, from tax credits to school lunches and President Bush is asking Congress for $100 million and 650 new employees to identify potentially erroneous EITC claims in advance, before money is paid out." (*New York Times,* February 5, 2003, p. A1)

The Administration is proposing a $100 million EITC "precertification" initiative for FY04 which will essentially be an audit of low-income taxpayers before they file their tax returns. This proposal is intended to reduce Earned Income Tax Credit error. We feel that rather than serving as a ***"filter"*** to ensure that ineligible taxpayers do not receive the credit, this precertification initiative may instead be a ***barrier*** for eligible families and individuals accessing the credit. The Administration's initiative could cause delays for tens of thousands of low-income taxpayers in its first year alone.

We urge that provisions are made so that the initiative does not overly burden taxpayers, driving them away from the EITC or out of the tax system altogether. We feel that there are alternatives. We strongly feel the need to work toward limiting the documentation burden on taxpayers and promote approaches to reducing error which are less burdensome to taxpayers including a request to the IRS to open up the process of developing the administrative regulations they are creating to implement the precertification initiative to public comment. We believe this option will allow affected taxpayers and organizations such as ours that provide free tax preparation to thousands of low-income taxpayers to help provide input to make this a workable program.

EITC PRECERTIFICATION COMMENTS

The Earned Income Tax Credit (EITC) is our country's most effective program to lift working families out of poverty. In 1999, for example, the EITC lifted 4.7 million people out of poverty, including 2.5 million children. At the same time, the EITC promotes work. The Center is continuously working toward ensuring that low and moderate income workers who are eligible for the Earned Income Tax Credit access the credit.

Former President Ronald Reagan called the EITC, "the best antipoverty, the best pro-family, the best job creation measure to come out of Congress." In Illinois last year, 754,673 households claimed the credit, bringing back over $1.25 billion to the state, an average of $1650 per household. Research shows that the majority of EITC recipients spend their return quickly on rent, food, utilities and other essentials, providing economic stimulus to the communities in which they live.

The impetus for Bush's EITC "precertification" initiative is a February 2002 IRS study claiming that approximately $9 billion, or 30 percent, of the 1999 tax year EITC should not have been paid. However, any EITC error rates will be much lower because the IRS and Congress have simplified the EITC tax code since 1999. This simplification of the tax code addresses the three largest sources of error which the IRS study reveals.

Rather than determining if measures to lower the EITC error rate over the last three years have been successful, the "precertification" initiative will place an unacceptably heavy burden on the working poor to prove that they are eligible for the tax credits which they are due. The initiative will also increase the complexity of tax administration, driving up costs for taxpayers and the IRS. Instead, efforts should focus on reducing errors by paid tax preparers who complete 68 percent of all EITC returns. Further reducing EITC errors can be achieved without creating unnecessary hardship for millions of low-income families. Simplification of the tax code would, as always, be the best way to continue to reduce error. In addition, the $100 million allocated for EITC pre-certification and/or additional resources could have a greater impact through a combination of approaches: some compliance activities, increased regulation of paid tax preparers, increased outreach and education efforts to EITC-eligible taxpayers, and an increase in IRS support for free tax preparation programs and low-income clinics serving EITC taxpayers around the country. All of these approaches were highlighted in the National Taxpayer Advocate 2002 Report to Congress.

Council for Electronic Revenue Communication Advancement
Alexandria, Virginia 22314
March 25, 2003

The Honorable Amo Houghton
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Council for Electronic Revenue Communication Advancement (CERCA) is pleased to respond to your request for comments on the proposal to extend the tax filing and payment deadline for individuals who e-file their returns.

CERCA strongly supports the Congressionally-mandated goal of achieving 80 percent electronic filing by the year 2007. Indeed, along with promoting other aspects of electronic tax modernization, CERCA's reason for existence is to promote e-filing. Notably, and most recently, CERCA played a very central role, as you well know, in facilitating the development of the Free File Alliance, which provides free e-filing and tax preparation to many American taxpayers. Well over 60 percent of taxpayers are eligible to participate in this program. At present, over 2 million taxpayers have already taken advantage of Free File, a remarkable accomplishment for a program growing out of an agreement between industry and government that was only formally reached on October 30, 2002.

Stimulating e-filing usage is a complicated challenge, however. While CERCA members recognize the intent to support electronic filing inherent in this proposal, we must report that, after very serious analysis, CERCA cannot endorse changing the tax filing deadline to April 30 for e-filers as the best course to take.

CERCA believes the proposal is problematic. Benefits fail to outweigh costs and there are obvious threats to taxpayer understanding of the operation of the tax system. CERCA concludes that:

- The cost to the national tax preparation industry would be quite significant. Much of this industry operates, of course, on the premise of closing down offices after April 15.
- It is quite significant that the resulting inconsistency with many state filing deadlines could create serious challenges, both for the IRS and state agencies.
- Abandoning (for some) the famous April 15 tax deadline, a date most Americans know as well as their own birthdays, might well lead to serious taxpayer confusion.

Taxpayers can already receive an automatic four-month extension, of course. Thus, the 15 days in April featured in this proposal really offer no advantage to those who will receive refunds, but who, for some reason, have not been able to finish their returns on time. Thus, the truly attractive element to the proposal relates to balance due filers, who would receive an additional 15 days before their payments are required, an option that would only exist if e-filing; those filing on paper would still be required to file and pay by April 15.

CERCA believes, however, that there may very well be merit in exploring an extension of the payment date for balance due filers to April 30, as long as the return is e-filed . . . by April 15. Further, the payment would need to be made electronically.

A payment deadline extension to April 30 would probably be a real incentive for many taxpayers, and thus boost e-file volume. We believe that this alternative approach may be well worth the investment, and would not carry with it the very serious set of problems inherent in the proposal to extend both the filing and payment date to April 30 for e-filers. To be sure, the economic impact of such a payment deadline extension would warrant very careful investigation.

We hope that this concept can be seriously studied by the Subcommittee, and we would certainly volunteer to assist in any way that our industry could during your examination of such an idea.

A full list of CERCA member companies is attached.

Sincerely,

Anthony T. Tullo
Chairman

CERCA Member Companies	
ADP	National Assoc. of Tax Professionals
American Express	National Tax Services, Inc.
Anexsys	Nelco
AT & T	New York State Dept. of Tax & Rev.*
Bank of America	Official Payments Corp.
Bank One, NA	On-Line Taxes, Inc.
Ceridian Tax Service, Inc.	Orrtax Software, Inc.
Computer Sciences Corporation	Paychex, Inc.
Creative Solutions	Petz Enterprises, Inc.
Discover Financial Services	ProBusiness
Drake Enterprises, Ltd.	Republic Bank/Refunds Now
FileYourTaxes.com	River City Bank, Inc.
Fleet Libris Information Solutions	Santa Barbara Bank & Trust
govOne Solutions, L.P.	2nd Story Software, Inc.
H & R Block	Social Security Administration*
Household Technologies	South Carolina Dept. of Revenue*
IBM Corporation	Tax Refund Express
Intuit, Inc.	Tax Simple
Jackson Hewitt, Inc.	Tax Slayer/RCS
Lacerte Software*	Tax Systems /File Safe, Inc.
Liberty Tax Service	Tax Technologies
Massachusetts Dept. of Revenue*	Tax Works
MasterCard International	TRW
Microsoft Corporation	Unisys
Miller & Chevaliera	Universal Tax Systems
Mitre Corporationa	Van Scoyoc Associates, Inc.
	Wood Associates

* Non-voting affiliate members

Statement of Jeffrey S. Gold, Washington, DC

Background

The principal author of these comments is Jeffrey S. Gold, JD, CPA, founder and past chairman of Community Tax Aid, Inc. (CTA), the first tax clinic in the country founded in 1969–70 and now in its 34th year. CTA remains an all-volunteer program, with no paid staff and ten to eleven locations that offer tax return preparation in several languages and representation when required.

CTA was replicated in Washington, DC, where the author wrote two successful LITC grant applications. He served on IRS Commissioner Donald C. Alexander's Advisory Group for two years and testified several times before House and Senate committees, the IRS and the DC City Council on matters concerning low-income taxpayers. He has been a panelist at several LITC conferences.

Past Taxpayer Bill of Rights legislation starting in 1988 has been a great help to taxpayers, particularly those with low income. But for all the steps forward, some have been backward and other issues have not been addressed. The focus of these comments is on low-income taxpayers.

This group of many millions of people cannot articulate their own concerns, partially because so many are functionally illiterate and because English is not their native language. Nor can this group afford to form an interest group or hire lobbyists to speak for them. And, sometimes their own representatives in Congress do not pay enough attention to their concerns and needs—although there has been some slow progress in this area.

Some of what appears below has been said in prior testimony, most recently at the Oversight Subcommittee's hearing on July12, 2001. It bears repeating. And new issues need to be added.

Earned Income Credit

Many of the tax problems that face low-income taxpayers involves the Earned Income Credit (EIC), one of the most complex areas of our tax law. Even at its most generous level, the credit is entirely phased out when a single parent with one qualifying child has income more than $30,200, and a married couple filing jointly with two qualifying children has income more than $34,178.

How serious are the problems faced by this group? The National Taxpayer Advocate's 2002 Annual Report to Congress lists 22 serious problems encountered by all taxpayers. Of the 22 problems, about half are either directly related to the EIC or often have a direct bearing on the credit (such as math error authority). Fortunately, we have a superb National Taxpayer Advocate who, from the start of her tenure, has actively sought to bring the full authority of her office to bear to solve existing problems.

Congressional Help is Essential. Starting with hearings about issues that bear heavily on low-income taxpayers, Congressional committees need to recognize that the growing safety-net community that serves this community is small and almost without exception is involved with low-income tax issues only as a part of their usual work. They certainly do not have anywhere the resources of more powerful interest groups. Two issues should be addressed: more time to submit comments and prepare testimony is essential, and hearings need to include seasoned representatives who work with low-income taxpayers regularly.

Penalty Relief. The *Taxpayer Relief Act of 1997* included compliance provisions that one law professor commentator observed were "draconian" (1997 Tax Legislation: Law, Explanation and Analysis, CCH Incorporated, p. 189). The provision, now in Internal Revenue Code (IRC) section 32(k), denies the EIC to taxpayers who claim it fraudulently or recklessly.

I was at the hearing at which the penalty was proposed. Only IRS and Treasury witnesses were invited to testify. Clearly a tax law provision that resulted in billions of dollars of overclaims needed a serious remedy. But the one chosen was, in the view of many, extreme.

First, many of those who incorrectly claim the EIC trust someone else to prepare their tax return. Having started my *pro bono* career helping low-income taxpayers several years before the EIC existed, I can tell you that from the start I have had to file many amended returns to correct EICs that both commercial preparers and VITA volunteers (trained by the IRS and generally limited to "simple" returns) did not prepare correctly. Two years ago I saw one where a commercial preparer claimed the EIC based on a state tax refund reported on Form 1099-G.

When a taxpayer signs his or her return, s/he takes responsibility for it—even when s/he does not understand the first thing about it, other than does s/he get a refund. I compare this to a successful small businessman I knew for several decades whose CPA prepared his tax return. The taxpayer signed it when it was complete, never questioning it, always trusting his tax professional.

Why then are low-income taxpayers who claim the EIC held to a standard (at least as measured by the penalties) far higher than other taxpayers? Two examples will help illustrate the point:

1. A preparer who fails to comply with the due diligence rules for the EIC (IRC section 6695) is penalized $100.
2. A preparer who is guilty of "willful or reckless conduct" (IRC section 6694(b)) faces a penalty of $1,000.

But taxpayers who follow incorrect advice of preparers who are guilty of the above misconduct can lose the EIC for two or ten years—a penalty that can exceed, at today's EIC rates, $40,000. More than $40,000! Something is very wrong here.

It is long past due that the penalty be a rebuttable presumption so the burden can be shifted to the preparer. This would likely be a more effective deterrent to EIC overclaims. Of course, taxpayers would need to be adequately informed of this new provision for it to be effective.

At the very least, this penalty should be reduced. After all, denying the EIC for ten years almost certainly covers more than half the time the otherwise qualifying child would be eligible for it. Who is being punished by this extreme penalty: the parent or the child?

User fees. The entire scheme of user fees needs to be revisited by Congress, the source of the authority the IRS uses to impose these fees. At least one current user fee is particularly unjust: the seemingly small $43 application fee for an installment agreement.

This was imposed about ten years ago when the IRS budget was left about $119 million short by Congress. The same Congress reminded the IRS that it had the authority to impose user fees to remedy this shortfall. The IRS dutifully considered several options and then imposed the application fee for an installment agreement.

I was one of only three witnesses to testify at the IRS hearing, all of us against the proposal. The only organization of tax professionals that testified was the Association of Enrolled Agents. No one else spoke up for the many low-income taxpayers who would be adversely affected. At the IRS's FOIA reading room, I found several letters from brave IRS employees who also believed this fee was unjust. Another writer noted that to someone in Washington $43 may be the cost of a business lunch but to folks in his area of Appalachia $43 was, in his words, "real money."

Most installment agreements at the time were for less than $5,000 and involved more than one tax year. Three common-sense situations resulted in the need for these agreements: (1) two-earner couples whose literacy was not enough to understand that they both could not claim their children for withholding, (2) taxpayers who were treated by their employers as self-employed—too often improperly—and owed substantial self-employment tax in addition to any income tax, and (3) people who received unemployment compensation benefits not realizing these were taxable (happily, this last situation was later remedied when taxpayers could elect to have tax withheld).

In each instance these taxpayers did not understand the law so, in addition to penalties for underpayment or late filing plus interest, they had to pay an added $43—deducted from their first payment, of course. This is not my idea of tax justice for someone who is ready, willing and able to pay their income tax but simply cannot understand the complexities.

One other area of user fees should be mentioned: a new user fee proposed to apply for an offer-in-compromise, which is an arrangement under which qualifying taxpayers can settle their tax debts for less than 100 cents on the dollar. The rules have ebbed and flowed so often in the past decade that the field is like an old pinball machine with no one to call "tilt." It is understandable that IRS resources are being "wasted" by many proposed offers that do not come close to meeting the standards for approval. But even with a low-income exemption for a user fee, many in the LITC community believe that a fee has a chilling effect that would deter otherwise valid offers from being submitted.

Free Assistance for Low-Income Taxpayers. A gnawing question is how to deliver the level quality assistance needed by more and more low-income taxpayers in an increasingly complex tax environment. This is an endless work-in-progress created, of course, by Congress, albeit with the best of intentions, to help the very people they are confusing and penalizing when they fail to understand.

The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs administered by the IRS were founded in 1969. They generally do fine work. But most of the volunteers are laymen who are trained by the IRS and are limited to the types of work they can do to "simple" returns. Of course, some of the sites have volunteers who work with the IRS or are CPAs, lawyers or enrolled agents and can and do help with complex situations, but these are far from the majority.

The VITA and TCE sites usually function only during tax season so when a taxpayer has a problem after April 15, they are on their own.

Programs like Community Tax Aid in New York, which are located in large cities and have a critical mass of volunteers to provide a full range of tax services and are available year round, are few and far between.

Enter the Low-Income Taxpayer Clinics (LITCs). Since these were created by the IRS Restructuring and Reform Act of 1998, they have helped a fortunate few taxpayers with their tax problems—from preparation to controversy. LITCs were created to assist exclusively with tax controversies, but a dearth of applications in the first two years led the IRS administrators—wisely, in my view—to allow assistance to taxpayers who spoke English as a second language (ESL), if at all.

The LITC program was conceived of by lawyers so it is understandable that they would want the funds to go to their programs. But having worked with low-income taxpayers for more than 30 years, including many in the ESL category, I strongly believe that the cost-benefit of funding all types of tax assistance programs from a single office should be preferred. To do otherwise is artificial and wastes a lot of scarce resources.

More than one LITC at a law school or by a legal services program operates both a tax return preparation unit, often as a VITA program, and a controversy clinic. The director of one says that he finds ". . . the separation of VITA from LITC is artificial, inefficient and detrimental to the very population that is being served." He finds that this separation ". . . misconstrues what tax preparation [for] low-income taxpayers is all about. It is as much tax interpretation as controversy is. It is not bean counting."

If our tax system is based on self-assessment, this is the larger part of the problem. Even if tax clinics averaged 100 clients a year, fewer than 15,000 people would be helped—the fortunate few. Is it not wiser to fund accurate return preparation so that controversy work never arises? Everyone wins in this scenario, especially the government and the taxpayer.

Would this be taking work away from the private sector? Of course. Is this justified? Again, of course. After all, Congress created the complex laws that compel the public to seek assistance. Is this the type of public works program that Congress should be fostering or should it work on ending or at least diminishing it? This question is, of course, rhetorical.

However and why LITCs were conceived, the reasons for their existence should be reexamined. It would be to the public good if they had as broad a scope as possible without being overly burdened by administrative requirements. The assistance community is small enough so that it should be kept together and allowed to grow as a single entity.

The 250%/10% limits for LITCs. LITCs can help taxpayers whose income is less than 250% of the federal poverty level and 10% of the LITC clients can be above this level. Particularly for larger families (e.g., $53,800 for a family of five), these limits seem designed to allow clinics to accept cases designed more to instruct students or volunteers at the cost of not helping taxpayers with much lower incomes. These limits should be revisited. The highest priority of who should get service from LITCs is people with the lowest income.

[Letter published in Tax Notes, 3/24/03, p. 1909]

Low-Income Taxpayers Should Get One-Stop Assistance

Professor Janet Spragens overview and suggestions about Low-Income Taxpayer Clinics to the IRS Oversight Board on January 27 (see *Tax Notes,* Feb. 24, 2003, p. 1275) is an essential view of LITC development. But LITCs are a new and evolving program and other views need to be aired.

The tax clinic, founded in 1990, that Professor Spragens heads is indeed one of the early controversy clinics. But Community Tax Aid, Inc. (CTA) in New York City, which I founded in 1969 and served as chairman of, began 20 years earlier. It is the oldest tax clinic on record. It began as a tax return preparation clinic, but from the start has represented clients at IRS and state tax audits and handled some Tax Court cases.

Thanks to Professor Spragens and the small group of inspired lawyers who took the lead, Congress enacted Code section 7526 establishing LITCs. As a result there is a national network of independent clinics (currently about 140) that serve a relatively small number of taxpayers who need help with their tax problems. LITCs are a needed, necessary and very valuable addition to effective and equitable application of our income tax system. They help level the playing field for low-and middle-income taxpayers who otherwise would be unrepresented.

But section 7526 was enacted after consulting only the lawyers and law professors who proposed it. No one else, to my knowledge, was consulted. It is no surprise, then, that these lawyers want all of the LITC appropriation for their controversy programs to the exclusion of other types of programs. It is no surprise that, in the first year of LITCs, they did not approve when IRS administrators of the LITC program broadly interpreted the statutory language to fund a small number of ESL (English as a Second Language) programs that also prepared tax returns.

The originators' preference would be to establish a separately funded program for tax preparation. This, despite the added administrative cost to help what essentially is the same population. In fact, several of the controversy LITCs run separate tax return preparation programs, nearly all of them as a VITA program.

As with any new venture—the new nation of the United States is a prime example—initial thoughts often deserve to be revisited and revised. Our nation's first governing document, the Articles of Confederation, was soon replaced by our Constitution, which, in turn, was quickly amended by the Bill of Rights. The LITC program also should be rethought. At least for several more years, I believe that all taxpayer assistance program—from preparation through representation—should be housed under the same roof.

In terms of setting priorities, the 2002 annual report to Congress by the National Taxpayer Advocate, Nina Olson, listed five areas of access the public should have. I fully endorse all five, although I would move tax return preparation from last to at least number two. After all, if tax returns are prepared properly there would be much less need for the other services (access to information, the IRS, Taxpayer Advocate Service, and representation).

Preparation errors would certainly be reduced, confusion caused by IRS Modernization would be avoided, as would the need to further involve the IRS or Tax Court. This would save an enormous amount of resources not to mention the angst, noted by Professor Spragens, that the taxpayers suffer.

Statement of the Independent Sector

INDEPENDENT SECTOR is a coalition of more than 700 national organizations and companies representing the vast diversity of the nonprofit sector and the field of philanthropy. Its members include many of the nation's most prominent nonprofit organizations, leading foundations, and Fortune 500 corporations with strong commitments to community involvement. This network represents millions of volunteers, donors, and people served in communities around the world. IS members work globally and locally in human services, education, religion, the arts, research, youth development, health care, advocacy, democracy, and many other areas. No other organization represents such a broad range of charitable organizations and activities.

INDEPENDENT SECTOR and the many organizations it represents have a keen interest in ensuring that charities provide public disclosure of key information to help ensure that they operate strictly in the public interest and not for private benefit. Charities depend on public trust to raise money and carry out their missions, and transparency is essential to maintaining that trust. For that reason, INDEPENDENT SECTOR and over 200 charities and nonprofits submitted comments supporting twelve of the recommendations offered by the Joint Committee on Taxation in its Study on Disclosure by Tax-Exempt Organizations as Required by Section 3802 Of The Internal Revenue Service Restructuring And Reform Act Of 1998.

In particular, INDEPENDENT SECTOR strongly supports the JCT recommendation that electronic filing for exempt organizations be implemented as quickly as possible. IS is currently leading the Electronic Data Initiative for Nonprofits (EDIN) project with the Council on Foundations, the National Council of Nonprofit Associations, OMB Watch, GuideStar-Philanthropic Research Inc., and the National Center for Charitable Statistics. EDIN has been working closely with the Internal Revenue Service to prepare for implementation of e-filing of the Form 990 in early 2004 and to encourage strong participation in e-filing by the charitable nonprofit community. We believe electronic filing has the greatest potential of any of the current regulatory and legislative proposals to improve public oversight of charities and to ensure that they are serving public and not private purposes.

INDEPENDENT SECTOR also supports the following JCT recommendations:

- Conform the disclosure requirements of third party communications regarding written determinations and exemption applications subject to disclosure under section 6104 to the disclosure requirements that apply to third-party communications under section 6110.

- Require disclosure of the annual return (Form 1120-POL) filed by political organizations described in section 527.
- Require disclosure of the names under which tax-exempt organizations conduct their operations on their annual information returns.
- Require the IRS to include notification of the public availability of the Form 990 through its taxpayer publications.
- Require tax-exempt organizations to disclose their World Wide Web addresses on their annual information returns.
- Increase the penalties for preparers of tax-exempt organizations' annual returns if there is a willful, reckless misrepresentation or disregard of relevant rules and regulations for filing the Form 990 and related forms.

INDEPENDENT SECTOR has supported these proposals as introduced earlier this year by Senator Charles Grassley in the CARE Act of 2003 (S. 256). In addition, we support the proposals introduced by Senator Grassley that seek to provide greater flexibility for the Internal Revenue Service to disclose to appropriate state charity regulators information related to refusal to recognize an organization as tax-exempt or revocation of tax-exemption with the stipulation that this information could only be used to administer state laws regulating tax-exempt organizations and that public disclosure of the information should be governed by the same penalties and restrictions as it is in the hands of the Internal Revenue Service.

In its report, the Joint Committee on Taxation had also recommended that tax-exempt entities (other than churches) that are below the filing threshold of the Form 990–EZ should be required to file annually a brief notification of their status with the Internal Revenue Service. INDEPENDENT SECTOR had raised concerns about the difficulties of enforcing this provision given frequent changes in volunteer leadership and in the address of very small charities. Legislation introduced in the Senate appears to strike an appropriate balance by requiring simple postcard verification with revocation of tax-exempt status only after an organization had failed to return the verification for three consecutive years.

Provisions Regarding Charities and Lobbying

While INDEPENDENT SECTOR supports a high degree to transparency for charities, we believe that it is extremely important to avoid reporting requirements that could have an undue chilling effect on charities' participation in the public policy process. Charities are on the front lines of the struggle against the most significant social problems, including hunger, poverty, discrimination, and disease, and are also the vanguard of many significant social innovations. The expertise and hands-on experience charities derive from their work for the public good can help legislators make more informed and enlightened decisions on the full range of issues that come before them. In passing the landmark 1976 legislation that clarified the lobbying rules for public charities, Congress clearly indicated its position that the public interest is served by encouraging more rather than less participation by charities in the public policy process—a position that INDEPENDENT SECTOR strongly supports.

As a practical matter, one of the chief barriers to such participation by charities is the complex set of federal and state rules governing lobbying by charities. Charities are subject not only to the federal tax laws on lobbying but also to the federal Lobbying Disclosure Act, the separate lobbying restrictions related to the receipt of federal grant funds, and to various state lobby disclosure statutes. The complexity of these rules has a substantial, and highly undesirable, chilling effect on participation in the democratic policymaking process, both for smaller organizations with limited staff and access to legal counsel and for larger organizations that must establish and maintain complex record-keeping systems. IS opposes additional reporting requirements, such as those recommended by the JCT for self-defense lobbying or expenses for nonpartisan analysis containing "indirect" calls to action, that could further deter charities from participation in the public policy process.

INDEPENDENT SECTOR would, however, commend to the Committee recent proposals approved by the Senate Finance Committee that would simplify lobbying requirements for nonprofit organizations by eliminating the current difference between the expenditure limits for direct and grassroots lobbying and permit charities to spend as much on grassroots lobbying as on direct lobbying. This proposal would allow charities to keep a single record of lobbying expenditures, rather than separate records for direct lobbying and grassroots lobbying.

In closing, INDEPENDENT SECTOR appreciates the opportunity to submit these comments on disclosure requirements and looks forward to working with the Subcommittee on Oversight of the Committee on Ways and Means as it considers specific Taxpayer Rights proposals and other efforts to improve tax administration.

National Association of Enrolled Agents
Gaithersburg, Maryland 20878
March 25, 2003

Hon. Amo Houghton
Chairman
Ways & Means Oversight Subcommittee
1136 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the members of the National Association of Enrolled Agents, I am writing to express our support and thank you for the opportunity to comment on pending taxpayer rights legislation. NAEA is the professional society of Enrolled Agents and represents approximately 10,000 EAs.

As you know, Congress created Enrolled Agents in 1884 to ensure the ethical and professional representation of claims brought to the Treasury Department. Members of NAEA ascribe to a Code of Ethics and Rules of Professional Conduct and adhere to annual continuing professional education standards that exceed IRS requirements for them. Like attorneys and Certified Public Accountants, we are governed by Treasury Department Circular Number 230 in our practice before the IRS. We are the only tax professionals who are tested by the IRS on our knowledge of tax law and procedure. Each year we collectively work with millions of individual and small business taxpayers. Consequently, Enrolled Agents are uniquely positioned to observe and comment on the average American taxpayer's experience within our tax administration system.

In this light, we would like to express our support for the section of the legislation that would enact the EA Credential Protection Act, which was sponsored by Congressmen Rob Portman and Ben Cardin in the last Congress. This legislation would codify the Treasury Department's power to license Enrolled Agents to practice before the IRS. It has passed the House without opposition and we are hopeful of similar approval in the Senate.

I am attaching background material for your consideration. If I can provide you with any additional information or answer any questions, please let me know.

Sincerely,

Judith A. Akin, EA
President

National Payroll Reporting Consortium, Inc.
Fairport, New York 14450
March 25, 2003

Hon. Amo Houghton
Chairman, Subcommittee on Oversight
Committee on Ways and Means
1136 Longworth House Office Building
Washington, DC 20515–6350

Re: Taxpayer Rights Proposals

Dear Chairman Houghton:

This responds to your request for written comments regarding taxpayer rights proposals. The members of the National Payroll Reporting Consortium (NPRC) strongly support your efforts to improve taxpayer fairness and the efficiency of IRS administration. We greatly appreciate your continued focus in this area and look forward to continuing to work with you as you promote legislation toward this end.

The NPRC represents businesses providing payroll processing and employment tax services (Payroll Reporting Agents) directly to employers. NPRC members serve over one million employers with a combined total of more than 35 million employees, and process payroll for more than one-third of the private sector workforce. Payroll Reporting Agents transmit more than one quarter of all Federal employment taxes received by the U.S. Treasury and have long served an important role in our nation's tax collection system as a conduit between employers and the IRS.

The following addresses proposals among those suggested by the U.S. Congress' Joint Committee on Taxation, the U.S. Department of the Treasury, and the IRS Office of Taxpayer Advocate. We have also addressed several provisions included in your taxpayers' rights bill from the 107th Congress: H.R. 3991, the Taxpayer Protection and IRS Accountability Act of 2002. Although there are many proposals included in these documents that NPRC members would generally support, we have addressed only those that are most relevant to tax administration matters faced by, and the IRS administration priorities of, NPRC members. These proposals and our comments are addressed in turn.

I. The National Taxpayer Advocate's 2001 and 2002 reports to Congress

1. Reduce penalty for failure to use the correct deposit method from 10 percent to 2 percent (2001).

NPRC supports this initiative as the current penalty penalizes timely deposits at the highest penalty tier, which is widely recognized as excessive. A legislative change is necessary to enable the IRS to assess a penalty that would be more appropriate.[1]

II. Treasury's 2000 Proposal to reform interest and penalty provisions of the Code

1. Consider reducing present-law 2 percent penalty if failure to deposit corrected within one banking day.

NPRC generally supports this initiative, which would improve voluntary compliance by encouraging taxpayers to correct situations in a timely manner. We believe that it is important, however, that the relief be carefully constructed so as not to provide a permanent grace period for each deposit that could be perceived as, in effect, a permanent one-day extension of all tax deposit due dates. Establishing an appropriate penalty amount coupled with compliance history factors (e.g., number of occurrences, prior FTD penalties) could alleviate the grace period concern.

2. Modify penalties for failure to file tax returns (Code 6651(a)(1)).

NPRC believes that the Treasury proposal to decrease the front-loading of assessed penalties and to increase the penalty for unresolved matters that extend beyond 6 months (from the return due date) is a logical approach to encourage taxpayer initiated resolutions. Consideration should be given to the IRS notice cycles to ensure adequate taxpayer notification prior to penalty escalation. In addition, to the extent practicable, the time period should exclude periods during which the issue is necessarily waiting for an IRS response or guidance that has clearly been requested, and without which further action on the part of the taxpayer would be inappropriate.

3. Consider the assessment of a fee, in the nature of a service charge, for late filing of "refund due" or "zero balance" returns.

NPRC agrees that this may be an effective measure to motivate compliant behavior, but suggests that a separate initiative could be utilized to foster electronic filing by only assessing the fee for late filing of "refund due" or "zero balance" returns filed in paper format. See also comments under item IV. (1) below.

III. The Joint Committee on Taxation's 2000 Proposal to reform interest and penalty provisions of the Code

1. Consider permitting penalty abatement for inadvertent failures to deposit occurring when the taxpayer changes to a different deposit schedule.

The NPRC supports the extension of the current statute to cover all affected deposits. It may be unnecessary, however, in light of the current IRS procedure to waive penalties for the first quarter after a taxpayer's deposit rules change, coupled with the IRS' planned implementation of an "early warning" notice, which is scheduled for January 2004.

[1] Internal Revenue Manual Section (20) 121 (1) states that ". . . penalties exist to encourage voluntary compliance by supporting the standards of behavior expected by the Internal Revenue Code voluntary compliance is the major goal of penalties . . . for most taxpayers voluntary compliance consists of preparing accurate returns, filing timely, and paying any tax due efforts made to fulfill these obligations constitute compliant behavior . . ." Also IRM Section 123 (8) ". . . the Service has the obligation to advance fairness and effectiveness of the tax system. Penalties should . . . (c) be objectively proportioned to the offense . . ."

The "early warning" consists of a notice to a taxpayer whose deposit schedule is changed from monthly to semiweekly, but who makes no payments during the first month in which the new deposit schedule is in effect. This notice would be received three or more months before a taxpayer might otherwise learn of an error, enabling corrective action, for example, in February rather than in May, which would reduce any penalty significantly.

2. Interest may be abated if attributable to *any* unreasonable error or delay by IRS.

NPRC supports this provision, and suggests that it should apply with respect to both income and employment taxes. Under current law, the ministerial act provisions do not apply to employment taxes. NPRC recommends that, at a minimum, employment taxes be added to the ministerial act provisions, and be considered when implementing additional changes. In addition, abatement/reduction in interest assessments should take into consideration the date funds actually transfer to the taxpayer.

IV. The President's 2004 Budget Proposal

1. Extend the due date (to April 30) for electronically filed 1040 returns.

NPRC is neutral as to this proposed change, but in general is strongly supportive of meaningful incentives related to electronic filing. With respect to individual income tax returns with additional tax due, NPRC suggests that a more effective incentive may be to extend the due date for *payment* of the additional tax due to April 30th, while retaining the April 15th *filing* due date, for returns filed electronically.

NPRC also notes that there are virtually no incentives for electronic filing of employment tax returns, and recommends that incentives be developed to encourage electronic filing of employment tax and other business tax returns. Tax credits and access to enhanced IRS customer services (such as IRS Electronic Services) are possible options.

In addition, most businesses are aware that if a mistake results in an IRS penalty, the IRS evaluates evidence of past compliance, diligence and prudent business practices in considering any request to waive the penalty. The IRS could also view the voluntary use of electronic tax payment methods and/or electronic filing as contributing positively to a taxpayer's history of compliance and due diligence. Businesses may perceive this as sufficient incentive to justify the additional costs of electronic filing and payment of federal taxes. However, legislative authority may be necessary to establish any taxpayer benefits related to electronic filing.

V. H.R. 3991, 107th Congress—The Taxpayer Protection and IRS Accountability Act of 2002

1. Eliminate the $50,000 threshold for abatement of interest on erroneous refunds (Section 103).

NPRC generally supports this provision, as an example of an arbitrary rule that does not contribute to equity or simplification. Current law requires the abatement of interest in the case of erroneous refunds attributable solely to errors made by the IRS, but only if the erroneous refund amount does not exceed $50,000. The $50,000 threshold should be removed.

2. Permit the IRS to waive certain penalties for unintentional minor errors that are committed by a taxpayer with a history of tax compliance and the penalty for which would be grossly disproportionate to the action.

NPRC supports the concept of broad administrative authority enabling the IRS to reduce penalties in those circumstances in which the IRS finds that such penalties are grossly disproportionate to the incident or error involved (see footnote 1).

3. Obligates the Treasury Inspector General for Tax Administration to submit a report to Congress on technological advances, such as email and faxes, that may allow alternative means for the IRS to communicate with taxpayers.

NPRC members support additional efforts on the part of Congress, Treasury and the IRS to continuously evaluate and draw attention to new electronic technologies that may improve the efficiency, accuracy and security of tax administration and related government services to taxpayers.

The foregoing represents NPRC's preliminary comments with regard to those taxpayer rights proposals of most interest to NPRC members. As you work to craft taxpayer rights legislation, we will continue to keep you advised of any additional comments we might have. Of course, we are happy to provide you with any assistance that we can. For additional information, please contact Pete Isberg at 973–974–5779.

Respectfully submitted,

Statement of the National Society of Accountants, Alexandria, Virginia

The National Society of Accountants (NSA) is pleased to submit comments for the hearing record on improving tax administration and improving taxpayer rights. The NSA and its affiliated state organizations represent 30,000 accountants, tax practitioners, business advisors and financial planners providing services to more than 19 million individuals and small business. Most NSA members are sole practitioners or partners in small to medium sized firms. NSA members agree to adhere to a code of professional conduct. NSA represents the accountants for Main Street, not the accountants for Wall Street.

NSA applauds Chairman Houghton for his initiative and leadership in developing legislation to improve tax administration and enhancing taxpayer rights in the 108th Congress. NSA welcomes the opportunity to work with the Subcommittee on Oversight in developing this important legislation.

IMPROVING TAX ADMINISTRATION

The Administration's fiscal 2004 federal budget request contained a number of provisions to improve tax administration. NSA offers the following comments on several of these proposals.

ALLOW PARTIAL PAY INSTALLMENT AGREEMENTS

We support the proposal to permit taxpayers to enter into any (including less than full pay) installment agreements with the IRS. This is a common sense provision whose implementation is long overdue. The IRS should not be prevented, by statute, from accepting installments of any amount offered by delinquent taxpayers. Enactment of this provision may provide another benefit by reducing the number of offer-in-compromise submissions and freeing up resources to improve the offer process.

PROPOSALS TO CURB FRIVOLOUS SUBMISSIONS AND FILINGS TO DELAY OR IMPEDE TAX ADMINISTRATION

This proposal is designed to curb frivolous submissions and filings by raising penalties for filing frivolous tax returns from $500 to $5,000. It would impose a $5,000 penalty for repeatedly filing or failure to withdraw, after notice, certain other submissions. While we generally support this provision we caution that if the legislation is improperly crafted these new measures could dampen legitimate resubmissions and filings, such as a resubmission of an Offer-In-Compromise based on new or updated taxpayer information.

ALLOW FOR TERMINATION OF INSTALLMENT AGREEMENTS FOR FAILURE TO FILE RETURNS AND FOR FAILURE TO MAKE TAX DEPOSITS

NSA is generally supportive of this proposal. However, to prevent the potential for abuse by overzealous IRS collection agents, this proposal should be modified to allow for circumstances beyond the control of the taxpayer and guarantee appeal rights.

OFFER–IN–COMPROMISE–CHIEF COUNSEL REVIEW

NSA supports the proposal to eliminate the requirement that the IRS Chief Counsel provide an opinion for any accepted offer equal to or exceeding $50,000. In our view, the Chief Counsel's review has not added any value to the program. Instead, it has adversely affected the process by withholding approval of offers on policy grounds rather than on legal sufficiency.

OFFER–IN–COMPROMISE–GENERAL

On the issue of the offer program in general, NSA maintains that the program remains fundamentally flawed. Ultimately, no amount of "process" improvement will help. The program needs to be moved from compliance-oriented personnel and reassigned to settlement-oriented personnel who are allowed to design and administer a settlement-oriented program. This would help the IRS work toward the goal of achieving what is potentially collectible at the earliest possible time and at the least cost to the government while providing taxpayers a fresh start toward future voluntary compliance.

EXTENSION OF TIME FOR E–FILED RETURNS

To help encourage the growth of electronic filing, the Administration proposed to extend the April filing date from April 15 to April 30 for individuals filing returns electronically. We sincerely doubt that this change will have any effect on increasing the number of electronic filings. The early filers do so to get their refunds sooner. The procrastinators file later because they have balance due returns. Why reward them with an extra 15 days to file and pay?

To truly encourage electronic filing, IRS should remove barriers that limit or discourage the practitioner community from participating as electronic return originators. Devoting more funds to advertising benefits to tax practitioners and taxpayers would also be a major step forward.

PROTECTING TAXPAYER RIGHTS

LACK OF ACCESS TO THE IRS MEANS AN EROSION OF TAXPAYER RIGHTS

The National Taxpayer Advocate, in her 2002 annual report to Congress, stated that navigating the IRS is the number one problem faced by taxpayers. In the preface to the report, the NTA states that, ". . . effective tax administration is a two-way street—the IRS must be open for business for all taxpayers, available for them to communicate—whether in person (Taxpayer Assistance Centers), in writing . . . via telephones . . . or through the Internet . . ." The NTA went on to say, "The concept of "access" is fundamental to universal achievement of taxpayer rights."

NSA shares this concern. More and more often, NSA members are informed that qualified IRS personnel are not available for face-to-face appointments. Often, callers are placed on hold for as long an hour and letters submitted to IRS addresses are never answered. For practitioners, problems in navigating the IRS boil down to the lack of access. It is a major source of frustration and inefficiency and ultimately impairs the ability of taxpayers to obtain adequate and affordable representation. Taxpayer rights are diminished when lack of access to IRS decision makers prevents problems from being solved in a timely and efficient manner. A long-term consequence is erosion in the perceived fairness of the tax system.

This lack of access to the IRS is manifest in many ways. Physical access to the IRS is being diminished. The Taxpayer Assistance Centers are the only formal place where a taxpayer can walk in and meet with an IRS representative. Unfortunately, many sites are not staffed with individuals trained, or with the authority, to solve the taxpayer's problem. Telephone service, while improving, is still substandard when dealing with complex issues where in-depth assistance is needed to solve a problem and service wait times are excessive and unreasonable. Furthermore, the IRS has not yet published, or made available on-line, a working directory to guide practitioners to appropriate IRS personnel who can resolve problems. In short, taxpayer and practitioner communication with the IRS appears to be limited to reaction mode only—waiting and responding to IRS notices rather than proactively approaching the IRS to solve a problem.

IMPROVING ACCESS TO THE IRS

At the administrative level, the IRS should adopt a policy of "First Contact Resolution" to mitigate the issue of practitioners and taxpayers not being able to find an IRS person to resolve a problem. For example, the adoption of "First Contact Resolution" policy would reduce the need for practitioners to request a collection due process hearing, which is often requested simply to protect taxpayer rights.

However, a more fundamental approach may be necessary. To enhance taxpayer rights, Congress should consider legislation that grants taxpayers a statutory right of access to the IRS. Such legislation, modeled after Internal Revenue Code Section 7521 would guarantee that taxpayers would: (1) have the right to appear at a local IRS office (other than a Taxpayer Assistance Center); (2) have the right to access the IRS via toll free telephone numbers that the IRS will answer in a timely manner; and (3) have correspondence replied to, or an acknowledgement by the IRS of receipt of the correspondence, within a reasonable period of time (such as fourteen days) and with a promised date of reply in no more than 30 days.

Note: NSA is the recipient of a Federal grant from the Internal Revenue Service to administer a Low-Income Taxpayer Assistance Clinic. No grant funds were used or expended to prepare this statement.

Statement of Colleen M. Kelley, National President, National Treasury Employees Union

On behalf of the National Treasury Employees Union, which represents 150,000 federal employees, including all bargaining unit employees at the IRS, I appreciate the opportunity to share the views of my members on taxpayer rights issues with the Subcommittee. In particular I would like to comment on two provisions in the President's FY '04 budget proposal.

First, the President proposes legislation that would provide for fairer treatment of IRS employees found to have violated section 1203 of the IRS Restructuring and Reform Act of 1998. That Act calls for mandatory termination of employees found to have violated any of ten offenses, known as the "ten deadly sins." The offenses range from serious infractions, such as harassment of a taxpayer, to nonsensical, such as filing a refund due tax return late.

The President's budget proposal, like legislation that passed the House in the last Congress, would drop late filing of refund returns and employee vs. employee complaints from coverage under section 1203 of IRS RRA 98. In addition, the proposal would allow for appropriate penalties up to and including termination for violations of section 1203, but would drop the current mandatory termination provision. NTEU supports these provisions.

The current provisions of section 1203 of IRS RRA 98 subject IRS employees to standards that no other federal employees in the executive, judicial or legislative branch are subject to. No other taxpayer faces a penalty of any kind for filing a tax return late if a refund is due. And no other federal employees in the executive, judicial or legislative branch face mandatory termination for a similar list of offenses.

IRS employees have difficult jobs and section 1203 of IRS RRA 98 make them even more difficult. A recent report by the General Accounting Office (GAO–03–394) points out that two thirds of IRS employees responding to its survey were fearful of a section 1203 action. They were concerned about being in the position of having to prove their innocence in the face of frivolous complaints from those trying to avoid paying their taxes. In fact, since enactment of RRA 98 noncompliant taxpayers, or in some cases, their unscrupulous representatives have filed 3,971 complaints against IRS employees for harassment, retaliation or threatening to audit for personal gain. After investigations, primarily by the Treasury Inspector General for Tax Administration, only 37 of those complaints were found to have merit. But the other 3,934 innocent employees had to live through investigations that can last a year or longer, all the time worrying that some document or other evidence proving their innocence might be lost and leave them subject to mandatory firing.

There has been much talk recently about falling enforcement statistics at the IRS. Clearly, fear of section 1203 penalties by enforcement personnel has been a contributing factor and the above referenced GAO report confirms that.

The President's proposal also calls for including unauthorized access to taxpayer information to the list of section 1203 violations. While NTEU would withhold opposition to this provision if the mandatory termination provision of 1203 is eliminated, we would adamantly oppose such an additional "11th deadly sin" if the mandatory termination provision is maintained.

While we intend to address another of the President's FY 04 budget proposals in more detail at a later date, NTEU has deep and fundamental concerns about the proposal to allow private collection agencies to collect tax debt on a commission basis. Such a proposal flies in the face of the tenets of IRS RRA 98, which specifically prevents employees or supervisors at the IRS from being evaluated on the amount of collections they bring in. Even if individual contract employees were not to be evaluated on the basis of their individual collection amounts, clearly paying a contractor out of its tax collection proceeds sets up the exact dynamic RRA 98 sought to avoid: providing incentives for overly aggressive tax collection techniques.

There are also serious questions regarding contractor access to confidential taxpayer information, the government's liability and taxpayer remedies, should such information be misused and whether the IRS has the needed technology to select appropriate cases. In addition, as even the IRS will acknowledge, if given the appropriate resources, IRS employees could collect outstanding tax debt at less cost and without subjecting taxpayers to the unknown impact of providing their confidential tax information to private collection companies. As stated earlier, NTEU looks forward to the opportunity to provide more detailed information to the subcommittee on this proposal at a future date.

Thank you again for the opportunity to provide these views. NTEU would be happy to answer any questions the subcommittee may have with regard to this statement.

To: The Honorable Amo Houghton, Chair
Subcommittee on Oversight
Committee on Ways and Means Committee
United States House of Representatives

From: William Josephson
Karin Kunstler Goldman
Assistant Attorneys General
New York State Department of Law

Date: March 26, 2003

Re: Comments on Taxpayer Rights Proposal

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The following are the comments of the Charities Bureau of the New York State Department of Law in response to the March 12, 2002 Advisory of the Committee on Ways and Means Subcommittee on Oversight:

In New York, as in most states, the Attorney General, as head of the Department of Law, supervises organizations and individuals that administer and/or solicit charitable funds or charitable assets within the State. The Attorney General works to protect donors to charity, charities and the beneficiaries of charities. The Attorney General's supervisory authority over charities is rooted in the common law of charitable trusts and corporations, as well as the *parens patriae* power of the State to protect the interest of the public in assets pledged to public purposes. In addition, the Attorney General has broad authority under State statutes, to regulate not-for-profit organizations and charitable trusts and to commence law enforcement investigations and legal actions to protect the public interest.

Legal oversight of the solicitation of contributions to charity is also a well established as a function of the States. Thirty-six states now have laws governing charitable solicitation by the many various forms these solicitations take—mail, telephone, print, electronic media and door-to-door. Twenty states require soliciting charities to register with their Attorney General; sixteen states require registration with another governmental agency such as the Secretary of State.

The charitable sector is growing constantly and constitutes over six percent of the Nation's economy. Charitable giving by individuals, corporations and foundations in 1999 was estimated at $190 billion dollars.[1] By 1999, foundations and endowed nonprofits had accumulated almost $1 trillion in investment assets.[2] An additional $2 to $3 trillion in charitable assets is expected to be controlled by charitable organizations by 2020.[3] In 1999, there were almost 1.3 million tax-exempt organizations in the United States; nearly 700,000 of which are publicly supported charities.[4] By 1999, the nonprofit sector became the third largest contributor to the US gross domestic product.[5] In 1999, nonprofit organizations employed one in every fifteen Americans.[6]

We outline below several areas in which amendments to the Internal Revenue Code would protect charitable assets, protect the contributing public against fraud and enhance the ability of the Internal Revenue Service (IRS) and state charity regulators like ourselves to regulate tax-exempt charitable organizations.

1. Amendment of Internal Revenue Code Section 6103 and 6104

The CARE Act of 2003, as reported to the floor of the other body, contains provisions that would amend the Internal Revenue Code of 1986, as amended, to authorize disclosure by the Internal Revenue Service to State charity regulators of information about organizations that have applied for, received or been denied exemption from federal income tax or which have been the subject of adverse action by the Internal Revenue Service. Such disclosure is crucial to effective state oversight of charities and enforcement of laws that regulate the solicitation and administration of charitable funds and we urge the Subcommittee to support the proposed amendments.

[1] *Giving USA 2000,* Indianapolis, Indiana: American Association of Fund-Raising Counsel Trust for Philanthropy, 2000.

[2] The Foundation Center, New York, New York

[3] John J. Havens and Paul G. Scherish, *Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy,* Boston College Social Welfare Research Institute, October 1999, pp. 17–19.

[4] Internal Revenue Service, Business Master File

[5] Survey of Current Business, Washington, DC, US Department of Commerce, Bureau of Economic Analysis, May 1999

[6] Ibid.

Currently, Internal Revenue Code sections 6103 and 6104 limit the situations under which the IRS may disclose information to state authorities. The IRS does not disclose to the states any information to concerning pending applications for tax exemption, investigations or litigation. Amendment of sections 6103 and 6104 to allow such disclosure would have the following results:

If the IRS were able to advise state charity regulators when organizations operating in their states have applied for tax exempt status, state charity regulators, who are typically in a better position to be familiar with charities operating in their states, would then be alerted to applications by organizations that have violated state law and, accordingly, could alert the IRS to issues that might impact its decision whether or not to grant tax exempt status.

The IRS and state regulators could jointly investigate and/or prosecute exempt organizations, avoid duplicate prosecutions and eliminate the possibility of inconsistent results. Currently, states do not even receive any IRS acknowledgment of referrals to the IRS of matters that appear to us to involve violations by exempt organizations of both the Internal Revenue Code and state law or just the Internal Revenue Code. The IRS does not advise the referring state if it intends to proceed or how it intends to proceed, let alone work jointly.

The lack of communication has a negative impact on state law enforcement efforts, for example, statute of limitations constraints may require that states proceed blindly on the state law issues even though the matter might be better handled by the IRS or by joint efforts. Sharing of information would avoid duplication of investigations and litigation and allow for better use of the limited resources of both the IRS and state charity regulators. Also, if we were able to cooperate, the risk might be reduced of depleting charitable assets in the defense of two separate proceedings.

Treasury and the Internal Revenue Service support these proposals.

Your Subcommittee's September 11 hearings confirmed that donors expect and must have a level of accountability that has not been provided in the past. In order for charitable organizations to maintain the trust of the American people, they must manage their funds more carefully and disclose to the public how they are fulfilling their fiduciary responsibilities. In order to insure that the fiduciary duties are fulfilled, regulatory agencies on both the state and federal level must be able to work efficiently together.

2. Preliminary Exemption Letters

The General Accounting Office's April, 2002 Report GAO–02–526, Improvements Possible in Public, IRS and State Oversight of Charities, noted that between 1996 and 2001 inclusive the number of applications for federal income tax exemption increased nine percent and the number of forms 990 filed by publicly supported charities increased 25 percent. Id. at 3. The Report seems to focus on the section 501(c)(3) 990 filers. Id. at 2, n. 3, but we are not completely sure since the second paragraph under "Background" appears to discuss all (c) filers. Id. at 4.

Similarly, J.E. Selez & J. Wolpert, New York City's Nonprofit Sector (May, 2002), report that the number of New York nonprofit charities, defined as those with annual revenues exceeding $25,000 that report on Internal Revenue Service Form 990 (not forms 990EZ or 990PF and not apparently other 501(c)'s that report on Form 990), "grew by almost 57 percent during the 1990's (21 percent between 1990 and 1995, by 29 percent between 1995 and 2000). Expenditures grew even faster—by 64 percent in year 2000 dollars . . . ." Id. at 16.

The personnel resources devoted by the Internal Revenue Service to reviewing applications for exempt status (again it is not clear to us whether the resources are only those devoted to 990 (c)(3) filers or to all (c) filers) seem to us out of line with the number of exemptions denied or rejected (which appears to be limited to the (c)(3) 990 filers) including for failure to complete the application or for reasons other than substantive reasons. GAO Report at 21, table 2. Granted that a tax exemption determination is an important act, we believe that the fact that so few are denied or withdrawn implies that the Internal Revenue Service, rather than move "revenue agents from doing examinations to processing the increased application workload," id. at 22 & 23, should (i) devote fewer resources to applications, (ii) routinely grant only two or three year preliminary exemptions and then have a 100 percent audit policy before granting further exemptions, (iii) then grant exemptions that expire, let's say, every ten years and audit again prior to renewal of exemption, and (iv) shift some of the burden of review at each stage to the states by requiring state input before the further exemptions are granted. See the second paragraph of the Fourth Section, infra.

Some empirical support for these suggestions can be derived from New York's experience with not-for-profit corporation certificates of incorporation. Until 1993, they had to be approved by a Supreme Court Justice on notice to the Attorney General. The review burden was both great and unproductive. It is all too easy to draft a certificate to meet the organizational tests for incorporation and federal income tax exemption. The repeal of the review and approval requirements in 1993 freed staff for compliance duties. However, most amendments to certificates of incorporation still require Supreme Court approval on notice to the Attorney General.

The Charities Bureau's accounting staff of four (two vacancies) completes an average of 2,000 reviews annually of our over 40,000 New York filers or five percent. If the vacancies were filled, presumably we could do 3000 reviews on average. The Service would have to say how meaningful a review volume this would be.

Moreover, a significant percentage of New York initial registrants never become operational or cease operations after a few years.

Finally, even if this policy change merely shifts the burden of IRS work, it shifts it to the right place, not the wrong place.

3. Increase Regulation of Charities that Give Grants to Foreign Individuals and Organizations

As we are all aware, several publicly supported United States charities have been identified as contributors to terrorists and terrorist organizations abroad. This situation underscores the need for enactment of explicit statutory or regulatory requirements that publicly supported, section 501(c)(3) organizations must follow in making grants to foreign organizations. Internal Revenue Code section 4945 and the regulations thereunder provide explicit guidance on this subject to private foundations, but responsible publicly supported charities have to infer the requirements, as illustrated by the Treasury's Office of Public Affairs having to issue the November 7, 2002 Response to Inquiries from Arab American and American Muslim Communities (PO–3607). This is anomalous, because overseas giving by publicly supported exempt organizations is far more substantial than overseas giving by private foundations.

In 1999 the New York Attorney General launched an investigation of the Holyland Foundation. It was hampered by our failure to enlist the cooperation of the Internal Revenue Service (to which the proposed amendment of Code sections 6103 and 6104 discussed above is relevant), although ultimately we were able to document Holyland's transfer of thousands of dollars to foreign bank accounts and organizations. We have been unable to proceed further, since we lack any overseas investigative capability, and no federal authority has come to our aid, although we have surely asked.

After 9/11, Holyland's assets were frozen, and we note the recent indictment of Infocom, a related organization, and its principals, for various foreign asset transaction transgressions.

Legislation or regulations, or both, should make explicit the procedures all charities must follow in making foreign grants and also alert them by cross references to other relevant statutes and regulations, such as those on which the Infocom indictment is based.

At the request of members of the staff of a counterpart committee of the other body, we are preparing specific proposals for regulation of grants for foreign individuals and organizations and will be happy to share that information with the Subcommittee.

4. Phase Out of Small Private Foundations

In New York, private foundations appear to raise far more compliance issues than do publicly supported charities, particularly the smaller private foundations. Moreover, our belief is that private foundations are more responsible for additional substantial increases in Internal Revenue Service application workload than are publicly supported applications and think Treasury, the IRS and the Congress should also.

We are particularly concerned that companies such as Fidelity Investments are marketing technology to make formation and management of private foundations simpler and cheaper and encouraging the formation of small foundations. B. Wolverson, @1st Century Sell, Chronicle of Philanthropy, February 6, 2003. (http//philanthropy.com/premium/article/v15/i08/08000701.htm)

At the least, all private foundations exemption determinations should be provisional and should not be renewed without advice from the relevant state charities regulators specifically as to, at the least, whether or not the charities are active, their registration and reports are current and fair on their face, have been the subject of any complaints or are under investigation. When e-filing arrives with coordination with the states' charities regulators through www.Guidestar.org or the National Center for Charitable Statistics or both, the states' inputs will quickly become much more substantial.

We also recommend amendments to the Internal Revenue Code that would:

1. deny tax exemption to private foundation applicants that have less than $20 million in net investment assets at inception; and/or
2. phase out over ten years the exempt status of private foundations with less than $20 million in net assets.

We choose $20 million because at that level a private foundation can afford a professional staff and/or make significant gifts. It has been pointed out to us that while $20 million might be appropriate for states like California and New York, it might not be for smaller states. On the other hand if our proposal is accepted, it should not be easily evaded by foreign incorporations.

A result of these proposals should be an increase in donor advised funds at community foundations because of the availability of higher charitable deductions relief from excise taxes and relief from paperwork. See S. Strom, New Philanthropists Find Drudgery, N.Y. Times, National Section p. 17 (Jan. 12, 2003) (attached). We understand that some revision of the Treasury regulations affecting donor advised funds may be in order, but on balance we think that community foundations generally offer a professionalism and responsibility that few small private foundations can match.

At the opposite end of the private foundation spectrum, we think that the major private foundations should have the opportunity to achieve, under prescribed conditions, publicly supported foundation status by analogy to, but without having to meet the Code section 509(a) public support tests, section 507 of the Code. We are thinking of foundations (1) with net investment assets of $100 million or more, (2) whose substantial contributors no longer are disqualified persons for purposes of section 4946 of the Code other than by virtue of being substantial contributors, i.e. they are no longer foundation managers, (3) whose assets contributed by their substantial contributors comprise less than five percent of the total assets of, and (4) whose investments do not comprise more than five percent of the business holdings of any substantial contributor, applying the attribution rules of Code section 4946.

5. Reorientation of Foundation Excise Tax Burden

The states' charities regulators' primary interest is protecting charitable funds. Many of the excise tax provisions of the Code are consistent with that interest. For example, it is right for Code sections 4941 (self-dealing), 4951 (Black Lung Trusts self-dealing) and 4958 (excess benefit transactions) to impose excise taxes on the self-dealer and foundation manager. They benefit from such transactions of which the charity is the victim.

In our experience, the private foundation excise taxes on excess business holdings (Code section 4943) and jeopardy investments (section 4944) almost always involve transactions that, directly or indirectly, benefit or inure to the benefit of disqualified persons. Therefore, those excise taxes should be levied exclusively on the foundation managers and other benefitting disqualified persons and not on the charity which again is the victim. To do otherwise, as the Code now does, fails to deter the disqualified persons from using charitable funds for noncharitable purposes.

Although the excise taxes on excess expenditures to influence legislation (Code section 4911), disqualifying lobbying expenditures (section 4912) and taxable expenditures (section 4945) can fall on the charity (as well as on management), there is a certain logic to decreasing the funds available for charity by the amount spent by the charity for noncharitable purposes (in the case of section 4911, amounts above the section 501(h) permitted amount). Similarly the Code section 4942 excise tax on failure to distribute income arguably should fall on the charity, because it should not be able to keep what it should have distributed for charitable purposes.

The Code section 4962 abatement provisions fail to take into account these important distinctions. It treats all the excise taxes imposed by sections 4941–45 (except for the section 4941(a) initial tax on self-dealing), 4951–2, 4955 and 4958 as if they were the same. We see no reason why self-dealers and other disqualified persons should be entitled to any abatement of first tier taxes on them.

6. Reduction in Charitable Deductions That in Reality Benefit Profession Fund Raisers

Abuse of the charitable deduction by charities that use telemarketers is rampant. Each year the New York Attorney General publishes Pennies for Charity (www.oag.state.ny.us/chaities/charities.html). The 2002 edition shows that on average only 30 percent of the funds raised by charity telemarketers, actually reach the charity. This is less than half the Better Business Bureau's best practice standard of 65 percent.

Worse, in many cases the amount of money that reaches the charity is far less or even zero. Yet, donors to telemarketing campaigns claim one hundred percent deductions. Since most telemarketing contributions are less that $250, the Code section 170(f)(8) requirement of charity acknowledgment to sustain the deductions is inapplicable.

The Service unsuccessfully attempted in United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173 (7th Cir. 1999), to uphold its and the Tax Court's determination that a charity was a controlled extension of its telemarketer and not entitled to exemption, although Judge Posner did suggest that the Service could proceed on the theory that the charity operated for the private benefit inurement of the telemarketer. We understand that the case was subsequently settled, but of course until Code sections 6103 and 6104 are amended we cannot find out on what terms.

We believe that the best way to deal with these serious issues (which are now also before the Supreme Court as a state charities fraud matter in Illinois v. Telemarketing Associates, Inc., No. 01–1806 and in which we unsuccessfully suggested that the Service join the Federal Trade Commission in the excellent brief submitted by the United States as amicus curiae in support of Illinois's enforcement efforts) is as a revenue protection matter.

We have drafted proposed amendments, attached as Exhibit A, to amend little known and, as far as we are aware, never enforced Code sections 6113 and 6710. The Treasury never seems to have promulgated regulations under either section. As amended, these sections would require disclosure of deductibility or nondeductibility in all fundraising solicitations conducted by professional fundraisers, would disallow deduction of costs allocable to the costs of such fundraising, would require the charity to acknowledge all resulting contributions, regardless of amount, and would limit the deduction to the actual charitable gift. This amendment is completely consistent with your Subcommittee's call for greater charity accountability in its 9/11 hearing.

Among other things the attached proposed amendments also close an apparent loophole in section 6113. We know of at least one fundraiser who forms section 501(c)(3) eligible organizations in many states, but never applies for income tax exemption. His organizations are arguably described in section 170(c), so he may evade section 6113.

To close the loophole, the proposed amendments apply to organizations that are exempt under section 170(c), but exempt religious organizations, educational institutions and membership organizations. We also limited the application of the proposed amendments to exempt organizations that pay outside entities to conduct fundraising on their behalf. Typically, they incur extremely high fundraising costs.

7. Excess Benefit Transaction

We believe that Code section 4958 should be applicable to private foundations and to the same section 501(c) organizations to which the proposed amendments to sections 6103 and 6104, discussed in section 1 above, apply. Moreover, like the excise tax provision of sections 4941–45, section 508(e) should be amended to make section 4958 part of the governing instruments of private foundations so that state charities regulators can enforce it, as they attempt to enforce sections 4941–45.

Exhibit A—Draft Proposed Amendments to Internal Revenue Code sections 6113 and 6710

TITLE 26. INTERNAL REVENUE CODE—SUBTITLE F. PROCEDURE AND ADMINISTRATION

CHAPTER 61. INFORMATION AND RETURNS

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

26 USCS section 6113 (2002)

Sec. 6113. DISCLOSURE OF DEDUCTIBILITY OR *NONDEDUCTIBILITY OF CONTRIBUTIONS.*

(a) GENERAL RULE.—Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that as provided herein contributions or gifts to such organization are or are not deductible as charitable contributions for Federal income tax purposes.

(b) ORGANIZATIONS TO WHICH SECTION APPLIES.

(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply either to any organization which is not described in section 170(c) and which—

(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501, and exempt from taxation under section 501(a),

(B) is a political organization (as defined in section 527(e)), or

(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period, or to any organization which is described in section 170(c) and which—

(D) has been determined by the Secretary to be exempt from taxation pursuant to section 501(c)(3) or

(E) is described in section 501(c)(3) but has not been so determined or whose determination has been revoked.

(2) EXEMPTION FOR SMALL ORGANIZATIONS.—

(A) ANNUAL GROSS RECEIPTS DO NOT EXCEED $ 100,000.—This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $ 100,000.

(B) MULTIPLE ORGANIZATION RULE.—The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

(3) SPECIAL RULE FOR CERTAIN FRATERNAL ORGANIZATIONS.—For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

(c) FUNDRAISING SOLICITATION.—For purposes of this section—

(1) IN GENERAL.—Except as provided in paragraph (2), the term 'fundraising solicitation' means any solicitation of contributions or gifts which is made—

(A) in written or printed form,

(B) by television or radio, [or]

(C) by telephone, [.]

(D) by e-mail,

(E) via an Internet web site, or

(F) by any other form of mass communication whether existing now or in the future.

(2) EXCEPTION FOR CERTAIN LETTERS OR CALLS.—The term 'fundraising solicitation' shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year.

(d) SUBSTANTIATION REQUIREMENT.—

(1) Section 170(f)(8) shall apply to all contributions or gifts, regardless of the amount of the contributions, to any organization described in section 170(c) and determined to be exempt from federal income tax under section 501(c)(3) to the extent that such organization pays or incurs amounts for any fundraising solicitation directly or indirectly carried out by one or more other organizations: provided, however, that religious organizations, educational institutions that confine their solicitation to faculty, students, alumni and their families and membership organizations that confine their solicitations to members having voting rights or other powers of governing body appointment or removal shall not be required to comply with this subsection (d).

(2) The contemporaneous written acknowledgment so required shall state that the contribution is not deductible as a charitable contribution for Federal income tax purposes if the net contribution, after subtracting the allocable costs of the applicable fundraising, is zero or a negative number and otherwise shall state the amount of the contribution that is available to the exempt organization for purposes described in section 501(c)(3), after subtracting the allocable costs of the fundraising solicitation, and shall state that only that amount is deductible as a charitable contribution for Federal income tax purposes.

TITLE 26. INTERNAL REVENUE CODE

SUBTITLE F. PROCEDURE AND ADMINISTRATION

CHAPTER 68. ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

SUBCHAPTER B. ASSESSABLE PENALTIES

PART I. GENERAL PROVISIONS – 26 USCS section 6710 (2002)

Sec. 6710. FAILURE TO DISCLOSE THAT CONTRIBUTIONS ARE NONDEDUCTIBLE.

(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

(1) the penalty under subsection (a) for [the] <u>each</u> day on which such failure occurred shall be the greater of—

(A) $1,000, or

(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

(2) by mail, shall be treated as occurring when the solicitation was mailed,

(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, [or]

(4) by telephone, shall be treated as occurring when the solicitation was made,[.]

<u>(5) by e-mail, shall be treated as occurring when the solicitation was transmitted,</u>

<u>(6) by Internet web site, shall be treated as occurring each twenty-four hour period or part thereof during which the solicitation was posted on and/or accessible through the Internet web site.</u>

<u>(7) by any other form of mass communication as provided in regulations to be proposed by the Secretary within 90 days after the effective date of the amendments to this section and thereafter from time to time as new forms of communication are developed.</u>

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