

LEGISLATIVE RECOMMENDATIONS: Introduction

Section 7803(c)(2)(B)(ii)(VIII) of the Internal Revenue Code (IRC) requires the National Taxpayer Advocate to include in her Annual Report to Congress, among other things, legislative recommendations to resolve problems encountered by taxpayers.

The chart immediately following this Introduction summarizes congressional action on recommendations the National Taxpayer Advocate proposed in her 2001 through 2012 Annual Reports.¹ The National Taxpayer Advocate places a high priority on working with the tax-writing committees and other interested parties to try to resolve problems encountered by taxpayers. In addition to submitting legislative proposals in each Annual Report, the National Taxpayer Advocate meets regularly with members of Congress and their staffs and testifies at hearings on the problems faced by taxpayers to ensure that Congress has an opportunity to receive and consider a taxpayer perspective. The following discussion details recent developments relating to the National Taxpayer Advocate's proposals.

REAL TIME TAX SYSTEM

In the 2012 and 2011 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS provide taxpayers with electronic access to third-party data to assist taxpayers in return preparation and that the IRS develop a pre-populated return option for taxpayers.² On April 15, 2013, Senator Shaheen introduced the Simpler Tax Filing Act of 2013, requiring the Secretary of the Treasury to study the feasibility of providing certain taxpayers with an optional, pre-prepared tax return.³ The bill also requires the Secretary of the Treasury, in consultation with the Taxpayer Advocate Service (TAS), to report to the House Ways and Means Committee and the Senate Finance Committee on actions necessary to achieve the goal of offering pre-prepared tax returns by tax year 2018. The report is to include analysis of the budgetary, administrative, and legislative barriers to achieving that goal, including the funding that it would require.⁴

TAXPAYER RECEIPT ACT OF 2013

To enhance taxpayer awareness of the connection between taxes paid and benefits received, the National Taxpayer Advocate recommended that Congress direct the IRS to provide all taxpayers with a “taxpayer receipt” showing how their tax dollars are being spent.⁵ This “taxpayer receipt” could be a more detailed version of the pie chart showing federal income and outlays currently published by the IRS,⁶ but would

1 An electronic version of the chart is available on the TAS website at www.TaxpayerAdvocate.irs.gov/2013AnnualReport. The chart describes all the legislative recommendations the National Taxpayer Advocate has made since 2001, and lists each Code section affected by the recommendations.

2 National Taxpayer Advocate 2012 Annual Report to Congress 180-191 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

3 Simpler Tax Filing Act of 2013, S. 722, 113th Cong. (2013).

4 *Id.*

5 National Taxpayer Advocate 2012 Annual Report to Congress 8 (Most Serious Problem: *The Complexity of the Tax Code*).

6 IRC § 7523 requires the IRS to include pie-shaped graphs showing the relative sizes of major outlay categories and major income categories in its instructions for Forms 1040, 1040A, and 1040EZ; see, e.g., IRS Form 1040 Instructions (2012), at 104.

be provided directly to each taxpayer in connection with the filing of a tax return.⁷ On August 22, 2013, Representative McDermott proposed legislation that would provide individual taxpayers, via U.S. mail, annual receipts for income taxes reported for the preceding taxable year. The receipt would state the amount paid, the taxpayer's filing status, earned income, and taxable income. Additionally, the receipt would contain tables listing expenditures in various categories of the federal budget, the ten most costly tax expenditures, and related spending information.⁸

TAXPAYER BILL OF RIGHTS

Over the last decade, the National Taxpayer Advocate has recommended many legislative changes that would protect taxpayer rights at a time when the IRS budget is shrinking and resources are shifting to enforcement. The National Taxpayer Advocate urges Congress to enact the legislative recommendations detailed in previous annual reports, beginning with the 2007 recommendation to codify a taxpayer bill of rights (TBOR) that would explicitly detail the rights and responsibilities of taxpayers.⁹ On July 22, 2013, Representative Roskam introduced the Taxpayer Bill of Rights Act of 2013,¹⁰ which would amend IRC § 7803 to require the Commissioner of Internal Revenue to ensure that IRS employees are familiar with and act in accordance with taxpayer rights. These rights include the right to be informed, to be assisted, to be heard, to pay no more than the correct amount of tax, to an appeal, to certainty, to privacy, to confidentiality, to representation, and to a fair and just tax system.¹¹ On July 31, 2013, the bill passed the House of Representatives, and was referred to the Senate Committee on Finance on August 1, 2013.

SMALL BUSINESS TAXPAYER BILL OF RIGHTS ACT OF 2013

Senator Cornyn and Representative Richmond introduced companion bills that would enact a number of the National Taxpayer Advocate's previous recommendations.¹² The proposed legislation would prohibit *ex parte* communications (*i.e.*, those that do not include the taxpayer or the taxpayer's representative)

7 In April 2011, the White House launched a calculator on its website titled "Your Federal Taxpayer Receipt" that allows taxpayers to enter the actual or estimated amounts of their Social Security, Medicare, and income tax payments and to see a breakdown showing how their payments are being applied to major categories of federal spending, including Social Security, Medicare, national defense, health care, job and family security programs, interest on the national debt, Veterans benefits, and education. See www.whitehouse.gov/files/taxreceipt/. While we view the availability of this calculator as a positive development, most taxpayers will not take the time to visit this website. We therefore believe a taxpayer receipt should be provided in connection with the filing of a return.

8 Taxpayer Receipt Act of 2013, H.R. 3039 113th Cong. (2013).

9 National Taxpayer Advocate 2011 Annual Report to Congress 493-518 (Legislative Recommendation: *Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights*). See also National Taxpayer Advocate's Report to Acting Commissioner Daniel Werfel, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration* (Nov. 4, 2013), available at www.TaxpayerAdvocate.irs.gov/2013AnnualReport; Most Serious Problem: *Taxpayer Rights: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration*, *supra*.

10 Taxpayer Bill of Rights Act of 2013, H.R. 2768, 113th Cong. (2013).

11 *Id.*

12 Small Business Taxpayer Bill of Rights Act of 2013, S. 725, 113th Cong. (2013) and H.R. 3479, 113th Cong. (2013). See also Most Serious Problem: *Taxpayer Rights: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration*, *supra*.

between Appeals officers and other IRS employees.¹³ In addition, the proposed legislation would extend the period in which a third party can bring a suit for return of levied funds or proceeds.¹⁴

The legislation also contains two of the National Taxpayer Advocate's recommendations regarding relief from joint and several liability. The bills would:

- Suspend the running of the period for filing a Tax Court petition seeking review of an innocent spouse claim for the time the taxpayer is prohibited by reason of the automatic stay imposed under section 362 of the Bankruptcy Code from filing such petition, plus 60 additional days;¹⁵ and
- Clarify that the scope and standard of review for taxpayers seeking equitable relief from joint and several liability under IRC § 6015(f) is *de novo*.¹⁶

THE SMALL BUSINESS PAYROLL PROTECTION ACT OF 2013

In recent years, a number of third party payers have gone out of business or embezzled their customers' funds. Because employers remain liable for payroll taxes, self-employed and small business taxpayers who fall victim to these situations can experience significant burden. This burden includes not only being forced to pay the amount twice — once to the third party payer that absconded with or dissipated the funds, and a second time to the IRS — but also being liable for interest and penalties. Some small businesses may not be able to recover from these setbacks and will be forced to cease operations.

This issue demonstrates the vital need for taxpayer protection in the payroll service industry, particularly for small business taxpayers that hire smaller third party payers. Beginning with the 2004 Annual Report to Congress, the National Taxpayer Advocate has addressed the problem of third party payer failures and recommended several legislative changes to Congress that could prevent or minimize the negative impact of these failures, including amending the Code to:

- Define a third party payer;
- Make a third party payer jointly and severally liable for the amount of tax collected from client employers but not paid over to the Treasury, plus applicable interest and penalties;

13 S. 725, 113th Cong. § 7 (2013) and H.R. 3479, 113th Cong. § 7 (2013). See National Taxpayer Advocate 2009 Annual Report to Congress 346-350 (Legislative Recommendation: *Strengthen the Independence of the IRS Office of Appeals and Require at Least One Appeals Officer and Settlement Officer in Each State*) (noting the IRS Restructuring and Reform Act of 1998 prohibits *ex parte* communication between Appeals employees and other IRS employees, but recent IRS practices allowing Appeals employees to share office space with other IRS employees foster a perception of a lack of independence).

14 Both bills extend the time for third parties to sue from nine months to three years. S. 725, 113th Cong. § 9 (2013); H.R. 3479, 113th Cong. § 9 (2013). See National Taxpayer Advocate 2001 Annual Report to Congress 202-209 (Legislative Recommendation: *Return of Levy or Sale Proceeds*).

15 S. 725, 113th Cong. § 11 (2013); H.R. 3479, 113th Cong. § 11 (2013). See National Taxpayer Advocate 2004 Annual Report to Congress 490-492 (Legislative Recommendation: *Effect of Automatic Stay Imposed in Bankruptcy Cases upon Innocent Spouse and CDP Petitions in Tax Court*).

16 S. 725, 113th Cong. § 14 (2013); H.R. 3479, 113th Cong. § 14 (2013). See National Taxpayer Advocate 2011 Annual Report to Congress 531-536 (Legislative Recommendation: *Clarify that the Scope and Standard of Tax Court Determinations Under Internal Revenue Code Section 6015(f) Is De Novo*). We note that the Court of Appeals for the Ninth Circuit, in *Wilson v. Comm'r*, 705 F.3d 980 (9th Cir. 2013), held that the scope and standard of the Tax Court's review of claims for relief under IRC § 6015(f) is *de novo*. The IRS acquiesced in the *Wilson* decision. *Action on dec.*, 2012-07 (June 17, 2013). However, the National Taxpayer Advocate believes that an amendment to IRC § 6015 (the innocent spouse provision of the Code) is still necessary with respect another issue, the issue of whether a taxpayer can raise innocent spouse relief as a defense in collection actions, and recommended that Congress address this problem in three Annual Reports to Congress. National Taxpayer Advocate 2010 Annual Report to Congress 377; National Taxpayer Advocate 2009 Annual Report to Congress 378; National Taxpayer Advocate 2007 Annual Report to Congress 549. The problem appears to persist as two district courts issued opinions recently holding that they do not have jurisdiction over IRC § 6015 claims raised as a defense in an action to reduce joint federal tax assessments to judgment or in a lien foreclosure suit. *U.S. v. Popowski*, 110 A.F.T.R.2d (RIA) 6997 (D.S.C. 2012); *U.S. v. Elman*, 110 A.F.T.R.2d (RIA) 6993 (N.D. Ill. 2012). For more detailed information, see Most Litigated Issue: *Relief from Joint and Several Liability Under IRC § 6015, infra/supra*.

- Authorize the IRS to require third party payers to register with the IRS and be sufficiently bonded; and
- Clarify that the Trust Fund Recovery Penalty (TFRP) survives bankruptcy when the debtor is not an individual.¹⁷

On May 8, 2013, Senator Mikulski introduced the Small Business Payroll Protection Act of 2013, to amend the Code to require the Secretary to establish a registration system for payroll tax deposit agents (defined as any person that provides payroll processing or tax filing and deposit service to one or more employers). The proposal requires such agents to: (1) submit a bond or to submit to quarterly third-party certifications, (2) make certain disclosures to their clients concerning liability for payment of employment taxes, and (3) pay penalties for failing to collect or pay over employment taxes or for attempting to evade or defeat payment of such taxes.¹⁸

RESTRICT ACCESS TO THE DEATH MASTER FILE

As one means to stem the growing number of tax-related identity theft cases, the National Taxpayer Advocate recommended that Congress restrict access to the Social Security Administration's death master file (DMF).¹⁹ The fiscal year 2014 budget bill contains a provision that restricts access to the DMF records of individuals who died during the previous three calendar years.²⁰

CONSOLIDATE EDUCATION INCENTIVES

The National Taxpayer Advocate has suggested consolidating and simplifying various Code provisions to make compliance less difficult.²¹ Senator Schumer and Representative Doggett introduced companion bills that include the National Taxpayer Advocate's recommendation to consolidate the education tax credits known as the Hope Scholarship and the Lifetime Learning Credits.²² The proposed legislation would amend the Code to replace the two credits with a new American Opportunity Tax Credit that: (1) allows an income tax credit of up to \$3,000 of the qualified tuition and related expenses of a student who is carrying at least one half of a normal course load; (2) increases the income threshold for reductions in the credit amount based upon modified adjusted gross income; (3) allows a lifetime dollar limitation on such credit of \$15,000 for all taxable years; and (4) makes 40 percent of the credit refundable. Additionally, the bill allows an exclusion from gross income of any amount received as a federal Pell grant.

17 National Taxpayer Advocate 2004 Annual Report to Congress 394-399 (Legislative Recommendation: *Protection From Payroll Service Provider Misappropriation*). See also National Taxpayer Advocate 2012 Annual Report to Congress 553-559 (Legislative Recommendation: *Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes*); 2007 Annual Report to Congress 538-544 (Legislative Recommendation: *Taxpayer Protection From Third Party Payer Failures*).

18 S. 900, 113th Cong. (2013).

19 See National Taxpayer Advocate 2011 Annual Report to Congress 519-523 (Legislative Recommendation: *Restrict Access to the Death Master File*). The DMF is a database available to the public that includes decedents' full names, Social Security numbers, dates of birth, dates of death, and the county, state, and Zip code of their last addresses.

20 The Bipartisan Budget Act of 2013, H.J. Res. 59, 113th Cong. § 203 (2013).

21 See, e.g., National Taxpayer Advocate 2008 Annual Report to Congress 370-372 (Legislative Recommendation: *Simplify and Streamline Education Tax Incentives*).

22 S. 835, 113th Cong. (2013); and H.R. 1738, 113th Cong. (2013).

AMEND THE ADOPTION CREDIT TO ACKNOWLEDGE JURISDICTION OF NATIVE AMERICAN TRIBES

In the 2012 Annual Report, the National Taxpayer Advocate recommended that Congress amend IRC § 7871(a) to include the adoption credit (IRC § 23) in the list of Code sections for which a Native American tribal government is treated as a “State.”²³ Because a Native American tribe is not considered a state for purposes of the credit and cannot certify a child’s special needs, taxpayers who adopt a Native American special needs child cannot claim the special needs adoption credit. On June 12, 2013, Representative Kilmer introduced the Adoption Tax Credit Tribal Parity Act of 2013 that would allow tribal governments to determine a child is a “child with special needs” for purposes of the adoption tax credit.²⁴

LEGISLATIVE RECOMMENDATIONS THAT HAVE LED TO ADMINISTRATIVE CHANGES

Sometimes legislative recommendations made by the National Taxpayer Advocate are accomplished through the issuance of regulations or other administrative guidance. Before proposing a legislative recommendation to Congress, the National Taxpayer Advocate attempts to work with the IRS to address her concerns through the issuance of regulations or other administrative guidance, if possible. When the IRS disagrees with a change that could be accomplished administratively or would not move quickly enough, the National Taxpayer Advocate proposes the change to Congress to give IRS direction. In some cases, the IRS has reconsidered its position and addressed issues raised by the National Taxpayer Advocate through the issuance of guidance, as described below.

Authorize Voluntary Withholding Agreements

Even though withholding is not required on payments to independent contractors (payees), some contractors may wish to have customers (payors) withhold taxes for them, just like they do for employees. Such withholding would help contractors avoid the burdens of making timely quarterly estimated tax payments. It is unclear, however, whether statutory authority exists to enter into such agreements.²⁵ In an effort to ease compliance burdens for independent contractors, the National Taxpayer Advocate recommended that IRC § 3402(p)(3) be amended to specifically authorize voluntary withholding agreements between independent contractors and service-recipients (as defined in IRC § 6041A(a)(1)) in her 2007 Annual Report to Congress.²⁶

In November of 2013, the IRS published temporary Treasury Regulations that permit the Secretary to issue guidance describing other payments for which withholding under a voluntary withholding agreement would be appropriate (*e.g.*, payors agree to withhold income tax on such payments if requested by the

23 National Taxpayer Advocate 2012 Annual Report to Congress 521-525 (Legislative Recommendation: *Amend the Adoption Credit to Acknowledge Jurisdiction of Native American Tribes*).

24 The Adoption Tax Credit Tribal Parity Act of 2013, H.R. 2332, 113th Cong. (2013).

25 IRC § 3402(p)(1) provides for voluntary withholding on certain federal payments (such as Social Security benefits). IRC § 3402(p)(2) provides for voluntary withholding on unemployment compensation payments. IRC § 3402(p)(3) provides for “other voluntary withholding” agreements and authorizes the Secretary, by regulation, to provide for withholding from (1) payments from employer to employee that do not constitute wages, and (2) “any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of [IRC chapter 24, Collection of Income Tax at Source].”

26 National Taxpayer Advocate 2007 Annual Report to Congress 493-492 (Legislative Recommendation: *Measures to Address Noncompliance in the Cash Economy*).

payee).²⁷ Such guidance was issued shortly thereafter in the form of Notice 2013-77 which expanded the use of voluntary withholding agreements in the context of certain dividends and other distributions.²⁸

Provide Relief for Untimely S Corporation Elections

The National Taxpayer Advocate has called attention to the harmful consequences of allowing taxpayers to elect S corporation status only if they do so by the 15th day of the third month of their taxable year.²⁹ Consequently, many taxpayers overlook the requirement to submit Form 2553, *Election by a Small Business Corporation*, subjecting themselves to serious tax consequences that include taxation at the corporate level and rendering shareholders unable to deduct operating losses on their individual tax returns. The National Taxpayer Advocate recommended that Congress amend IRC § 1362(b)(1) to allow a small business corporation to elect to be treated as an S corporation by checking a box on its first timely filed (including extensions) tax return, but acknowledged that the opportunities for relief through the issuance of administrative guidance exist and urged the IRS to expedite the issuance of a consolidated revenue procedure for late election relief.³⁰

On September 3, 2013, the IRS published a revenue procedure that consolidates relief provisions included in prior revenue procedures and, *inter alia*, provides a simplified method for taxpayers to request relief for late S corporation elections within three years and 75 days after the date on which the S corporation election is intended to be effective.³¹

Aggregate Employment Tax Return Filing by a Designated Third Party Agent

For over a decade, the National Taxpayer Advocate addressed the problem of Third Party Payer (TPP) failures and recommended measures that could prevent or minimize the negative impact of these failures on common law employers, including home care service recipients (HCSRs).³² Because common law employers remain liable for payroll taxes, those victimized in these situations (especially self-employed and small business taxpayers, and HCSRs) can experience significant burden. Among other things, the National Taxpayer Advocate proposed a legislative change to amend IRC § 3504 to require aggregate filers (*i.e.*, agents with an approved Form 2678, *Employer/Payer Appointment of Agent*) to allocate reported and paid employment taxes among their clients using a form prescribed by the IRS and impose a penalty for

27 Treas. Reg. § 31.3402-1T(c), 78 Fed. Reg. 71476 (Nov. 29, 2013).

28 Notice 2013-77, 2013-50 I.R.B. 632. The Notice specifically addresses the Alaska Native Corporation (ANC) and allows an ANC and any shareholder of the ANC to enter into an agreement for voluntary withholding under IRC § 3402(p)(3)(B). Thus, dividends and other distributions paid by an ANC to a shareholder will be subject to voluntary income tax withholding under section 3402(p)(3)(B) if the shareholder requests the withholding and the ANC agrees to withhold.

29 See National Taxpayer Advocate 2010 Annual Report to Congress 410-411 (Legislative Recommendation: *Extend the Due Date for S Corporation Elections to Reduce the High Rate of Untimely Elections*). Senator Franken introduced legislation to allow corporations to elect S corporation status with their first filed returns. S. 2271, 112th Cong. (2012).

30 See National Taxpayer Advocate 2010 Annual Report to Congress 278-290 (Most Serious Problem: *S Corporation Election Process Unduly Burdens Small Businesses*).

31 Rev. Proc. 2013-30, 2013-36 I.R.B. 173.

32 See, e.g., National Taxpayer Advocate 2012 Annual Report to Congress 553-559 (Legislative Recommendation: *Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes*); National Taxpayer Advocate 2007 Annual Report to Congress 556-557 (Legislative Recommendation: *Home Care Service Workers*). See also National Taxpayer Advocate 2007 Annual Report to Congress 538-544; National Taxpayer Advocate 2004 Annual Report to Congress 394-399; National Taxpayer Advocate 2001 Annual Report to Congress 193.

the failure to file absent reasonable cause, and shift the liability for employment taxes from the service recipients, to the administrators of HCSR funding.³³

The IRS has taken several steps to address the National Taxpayer Advocate's concerns through the issuance of Treasury Regulations and other administrative guidance.³⁴ The IRS has created Schedules R (*Schedule for Aggregate Form 941, Schedule for Aggregate Form 940*) for Form 941, *Employer's QUARTERLY Federal Tax Return*, and Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, for tracking employer-agent relationships for agents with an approved Form 2678.³⁵ Effective December 12, 2013, TPPs authorized to file in the aggregate must now allocate reported and paid employment taxes among their clients; in addition, the IRS has published special rules for agents of the home care service recipients, including state agents, who may file an aggregate Form 940.³⁶

SUMMARY OF 2013 LEGISLATIVE RECOMMENDATIONS

1. Permanently repeal the Alternative Minimum Tax (AMT).

The AMT does not achieve its original goal — to ensure that wealthy taxpayers pay at least some tax. By one projection, about 1,000 millionaires will pay no federal income tax in 2013. Those with the highest incomes are actually less likely to pay AMT than those just below them. The AMT penalizes middle income taxpayers for having children, getting married, or paying state and local taxes. The AMT is also unnecessarily complicated and burdensome, even for those who are not subject to it. Many taxpayers must fill out a lengthy form only to find they owe little or no AMT after all. Moreover, the complexity of the AMT reduces the transparency of the tax system, making it more difficult for people to know their marginal tax rate and predict what they will owe. When people owe more than anticipated, voluntary compliance suffers.

2. Amend IRC § 6511(h)(2) to provide that an individual is financially disabled when he or she has a physical or mental impairment, determined by a licensed medical or mental health professional, which materially limits the individual's management of his or her financial affairs.

In 1998 Congress amended IRC § 6511 by adding subsection (h), which suspends the running of the period for filing a claim for a refund where a taxpayer can show that he or she was financially disabled. However, the current, narrowly tailored provision fails to protect taxpayers who lack the capacity to file a refund claim. The statute requires a qualifying taxpayer to have a “medically determinable” physical or mental impairment, limiting the

33 National Taxpayer Advocate 2012 Annual Report to Congress 553-559; National Taxpayer Advocate 2007 Annual Report to Congress 556-557. Under IRC § 3504, the Secretary is authorized to issue regulations to “designate [a] fiduciary, agent, or other person” that has the “control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers,” to perform acts required of employers. IRC § 3504. Both the designee and the employer remain liable for payroll taxes and all penalties as long as the agent authorization made on the Form 2678 is in effect. IRC § 3504; Treas. Reg. § 31.3504-1.

34 See T.D. 9649, 78 Fed. Reg. 75471 (Dec. 12, 2013) (amending Treas. Reg. § 31.3504-1 to provide that the IRS may authorize an agent to undertake the employment tax obligations of an employer with respect to Federal Unemployment Tax Act (FUTA) tax); Rev. Proc. 2013-39, 2013-52 I.R.B. 830 (updating the procedure for requesting the IRS authorize a person to act as agent under IRC § 3504).

35 The Schedule R includes a list of all employers using the agent with an approved Form 2678 and the payroll liabilities reported by the agent on the Form 941 for each employer. IRM 5.1.24.4.4.1 (Aug. 15, 2012); IRM 21.7.2.4.4.3 (Oct. 1, 2012). See also the Schedule R (Form 940), designed for filers of Form 940 having approved Forms 2678. IRM 21.7.3.4.7 (Oct. 1, 2012).

36 Rev. Proc. 2013-39, 2013-52 I.R.B. 830.

evidence the IRS could consider, such as determinations from psychologists or clinical social workers. It also requires that the taxpayer be “unable” to manage his or her financial affairs due to a physical or mental impairment. This forces the individual making the determination to provide a global, “all or nothing,” statement about the effect of the impairments. These requirements have led the IRS to dismiss otherwise compelling evidence and deny relief to taxpayers.

3. Amend IRC § 32(k) to clarify that the IRS has the burden of proof when proposing to impose the two-year ban on claiming EITC.

IRC § 32(k) authorizes the IRS to ban taxpayers from claiming the Earned Income Tax Credit (EITC) for two years if the IRS determines they claimed the credit improperly due to reckless or intentional disregard of rules and regulations. The IRS often ignores the statutory requirements for imposing the ban, contravenes its own Chief Counsel guidance, and bypasses its own procedural safeguards to impose the ban. For the vulnerable low income taxpayers who are otherwise eligible for EITC, inappropriately being deprived of the credit for two years is a serious burden. These taxpayers may be intimidated and fearful of protesting the IRS’s treatment of them, may not understand they have been wronged when the IRS imposes the ban without following the statutory requirements, and consequently may not seek the assistance they need, such as from Low Income Taxpayer Clinics. A taxpayer may petition the Tax Court for review of the IRS’s determination to impose the two-year ban, but the taxpayer may have the burden of proving the IRS acted improperly. The proposed change would require the IRS to produce evidence of the taxpayer’s reckless or intentional disregard of rules and regulations and persuade the court that imposition of the ban would be appropriate.

4. Clarify that the 9.5-percent affordability threshold for the Affordable Care Act’s Premium Tax Credit pertains to the applicable type of insurance, whether self-only or family coverage.

The recommendation would align the rule with economic affordability. Under a Treasury Regulation implementing the Affordable Care Act, an employee’s family may be ineligible for the premium tax credit if the cost of “self-only” insurance would be affordable, even though they pay more for family coverage. This is because a 9.5-percent affordability threshold in the regulation refers to self-only cost — even if the employee needs family coverage. As a logical matter, the affordability threshold creates a disjunct between a stipulated amount and the actual cost of family coverage. Illogical provisions, which run contrary to intuitive behavior, make tax administration difficult. As a practical matter, disqualification from the premium tax credit makes it harder for families to obtain health insurance.

5. Expand the Taxpayer Identification Number matching statute for purposes of information reports on tuition to allow the IRS to alert colleges of mismatches to resolve with students prior to filing information returns.

Although the Internal Revenue Code requires colleges and universities to file information returns with the IRS reflecting tuition payments from students, the law does not permit these eligible educational institutions to verify Taxpayer Identification Numbers (TINs) with

the IRS prior to filing. Unlike other information return filers who can perfect TINs once the IRS advises them of an error, colleges and universities must rely on student input while still facing penalties for errors. Existing law permits TIN matching by payers of income, who would have to do back-up withholding in the case of a payee with an inaccurate TIN. This would be inapplicable to colleges and universities when they are not paying income to students. Nevertheless, colleges and universities have a tuition information reporting requirement for which they need to verify TINs as a practical matter. A TIN may not match a student's name for various reasons, such as transposition errors or name changes.