LR #2 Broaden Relief from Timeframes for Filing a Claim for Refund for Taxpayers with Physical or Mental Impairments

PROBLEM

Congress has placed within the tax code a number of safeguards to ensure that taxpayers pay only the correct amount of tax. One of these safeguards is Internal Revenue Code (IRC) § 6511, which allows taxpayers to file a claim for a credit or refund of an overpayment. The taxpayer must file the claim within a specified time; if not, it is forgone.[1] Failure to file a timely claim for refund with the IRS also prevents a taxpayer from filing suit under IRC § 7422 to claim the refund in U.S. District Court or the Court of Federal Claims.[2]

Congress amended IRC § 6511 in 1998 by adding IRC § 6511(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.[3] The provision was written in direct response to what many felt was an unfair outcome in the *Brockamp* case.[4]

The National Taxpayer Advocate understands the IRS's need for a legal standard that is practical in its application. However, the current, narrowly tailored provision fails to protect numerous taxpayers who lack the capacity to file a refund claim. The difficulties presented by the statute include requirements that:

- A qualifying taxpayer have a "medically determinable" physical or mental impairment. This limits other, potentially more valuable determinations from being considered, such as those of psychologists or clinical social workers.[5]
- The taxpayer be "unable" to manage his or her financial affairs as a result of a physical or mental impairment. This forces the individual making the determination to provide a global, "all or nothing," statement regarding the effect of the impairments, which is often contrary to how an impairment manifests itself.

These requirements have led the IRS to dismiss otherwise compelling evidence and have resulted in the denial of relief under IRC § 6511(h) to taxpayers who have lacked the capacity to file a refund claim. Such problems were intensified by the guidance issued under IRC § 6511(h), which further restricts what

1 Under IRC § 6511(a), a taxpayer must file a claim for credit or refund of an overpayment within 1) three years from the time the return was filed, or 2) two years from the time the tax was paid, whichever is later. If no return was ever filed by the taxpayer then the claim must be filed within two years of payment of the tax.

2 Under IRC § 6532, a refund suit cannot be brought before the earlier of six months after filing a refund claim or issuance of notice of disallowance of the claim.

3 Pub. L. No. 105-206, 112 Stat. 685 (July 22, 1998) amended IRC § 6511, adding (h) which provides that a person is financially disabled when he or she is "unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Additionally, the statute expressly authorizes the IRS to establish the "form and manner" of the proof a taxpayer must furnish to establish financial disability. The procedures for claiming financial disability are set forth in Rev. Proc. 99-21, 1999-1 C.B. 960, and require a taxpayer to submit a certification signed by a physician.

4 *U.S. v. Brockamp*, 519 U.S. 347 (1997).

5 *See, e.g.*, *Green v. Comm'r*, T.C. Memo. 2009-105. Rev. Proc. 99-21, 1999-1 C.B. 960, references 42 U.S.C. § 1395x(r), which defines physician, thereby excluding other medical professionals, such as nurse practitioners and physician assistants. *See also Henry v. United States*, 98 A.F.T.R.2d (RIA) 8359 (N.D. Tex. 2006).

documentation the IRS can consider when evaluating the presence of qualifying impairment, and according to some observers is not a clear reflection of Congress's intent.[6]

IRC § 6511(h) should be revised to clarify that the impairment can be determined by a health professional, and that a qualifying disability includes one that materially limits an individual's management of his or her financial affairs, rather than only one that leaves the individual "unable to manage" these affairs. Such revisions would protect more taxpayers who lack the capacity to file a refund claim, while balancing the IRS's need to administer requests for relief.

EXAMPLE

An unmarried taxpayer filed his return and paid his tax liability on April 15, 2009, then discovered he had overpaid. In May of 2011, the taxpayer began suffering from depression after a highly stressful period at work. The taxpayer found it difficult to get out of bed and found it overwhelming to complete normal day-to-day tasks. The taxpayer had his rent automatically withdrawn from his checking account, and could usually pay utilities and other monthly bills online, although the payments were often late and sometimes missed. However, he was unable to conduct more complex financial matters, such as managing his investments or submitting claims to his health insurance provider. The taxpayer's impairment also left him unable to complete a refund claim and collect and organize the supporting documents. The most severe phase of the depression lasted for about 16 months. During this time, no one was authorized to act on the taxpayer's behalf in financial matters.

After recovering from the depression, the taxpayer filed a refund claim in September of 2012. The taxpayer attached to the claim a letter from his clinical psychologist, stating that during the time of the depression, the taxpayer was materially limited from managing his financial affairs. It went on to specify that even though the taxpayer was occasionally able to perform simple and easy tasks, because of his clinical depression he gave up on more complicated and difficult tasks or avoided them altogether.

Under the current IRC § 6511(h), the taxpayer would not be considered financially disabled because the determination did not specify that he was unable to manage financial affairs. Further, the determination letter was written by a psychologist and would not be considered a medical determination. Therefore, the refund claim would be barred.

RECOMMENDATION

The National Taxpayer Advocate recommends that Congress amend IRC § 6511(h)(2) to define a financially disabled individual as follows:

First, replace the existing requirement that the individual impairment be medically determinable with a provision that it be determined by a qualified medical or mental health professional. For this purpose, Congress should specify that a qualified medical or mental health professional is an individual who is

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6 Rev. Proc. 99-21, 1999-1 C.B. 960. The National Taxpayer Advocate acknowledges that concerns raised in this legislative recommendation could also be at least partially alleviated by new guidance. *See* Bruce A. McGovern, *The New Provision for Tolling the Limitations Period for Seeking Tax Refund: Its History, Operation and Policy, and Suggestions for Reform*, 65 Mo. L. Rev. 797 (2000) (stating that "[a]lthough a physician's opinion is relevant to each of these issues, it should not be the sole evidence that the Service considers. Such exclusive reliance is contrary to congressional intent.").

licensed by the state in which he or she practices to provide direct medical or mental health treatment to another individual.

Second, replace the existing requirement that the impairment leaves the individual unable to manage his financial affairs with the requirement that the impairment materially limits the management of those affairs.

PRESENT LAW

Prior to 1998, IRC § 6511 made no allowance for late refund claims, and all claims for credit or refund of an overpayment had to be filed within 1) three years from the time the return was filed, or 2) two years from the time the tax was paid, whichever was later.[7] The harshness of this strict filing period was demonstrated by both the *Webb* and *Brockamp* cases, in which the taxpayers lacked the capacity to file refund claims within the proper period and argued that the statute of limitations should be equitably tolled.[8]

The Doctrine of Equitable Tolling

The equitable tolling doctrine prevents a statute of limitations from barring a claim if the claimant, despite diligent efforts, did not discover the injury or under the circumstances could not reasonably be expected to file the claim within the designated time period.[9] In *Irwin v. Dept. of Veterans Affair*s, 498 U.S. 1075 (1991), the Supreme Court held that when Congress has waived the government's sovereign immunity, thereby subjecting it to lawsuits, equitable tolling should be made applicable in the same way that it is applicable to private suits. Some speculated that equitable tolling might be expanded to situations such as those at issue in *Webb* and *Brockamp*. However, the Supreme Court in *Brockamp* and the Fourth Circuit Court of Appeals in *Webb* declined to toll IRC § 6511, despite the taxpayers' inability to comply with the statutory limitations period due to impairments. The rationale was that the requirements of IRC § 6511 were already set out with specificity.[10]

U.S. v. Brockamp

In *U.S. v. Brockamp*,[11] the taxpayer, who was 93 years old and demonstrating early signs of dementia, mailed a check to the IRS for $7,000, along with an application for an automatic extension of time to file his 1983 tax return. Despite his extension request, the taxpayer never filed a return for 1983. More than two years later, on July 15, 1986, the IRS transferred the $7,000 from the taxpayer's account into an "Excess Collection account."[12]

7 IRC § 6511(a). If no return was ever filed by the taxpayer then the claim must be filed within two years of payment of the tax.

8 *U.S. v. Brockamp*, 519 U.S. 347 (1997), and *Webb v. U.S.*, 850 F. Supp. 489 (E.D. Va. 1994).

9 *Wolin v. Smith Barney, Inc.*, 83 F.3d 847, 852 (7th Cir. 1996).

10 *Webb v. U.S.*, 66 F.3d 691 (4th Cir. 1995), *cert. denied*, 519 U.S. 1148 (1997), and *U.S. v. Brockamp*, 519 U.S. 347 (1997), which was decided shortly after *Webb*, are discussed in more detail in the text. The Supreme Court recently restated its position taken in Brockamp, albeit not in a tax case, in *Sebelius v. Auburn Reg. Med. Ctr.*, 133 S. Ct. 817 (2013). Specifically, a provision of a Medicare statute that set a 180-day limit for health care providers to file administrative appeals was not subject to equitable tolling, because the regulation implementing the provision was a permissible interpretation of the law.

11 *U.S. v. Brockamp*, 519 U.S. 347 (1997).

12 National Taxpayer Advocate 2006 Annual Report to Congress at 157. The Excess Collections File (XSF) is a cumulative file that reflects payments that cannot be identified or applied to a specific taxpayer account. Internal Revenue Manual (IRM) 5.19.10.2 (Oct. 15, 2012). The National Taxpayer Advocate has expressed concern in the past that the IRS routinely moves funds into the XSF with very little research or attempts to contact the taxpayer to ascertain whether a taxable return should be filed, and if so, where such funds should be applied.

On November 7, 1988, the taxpayer died intestate. During the administration of his estate, his daughter discovered the $7,000 payment and requested a refund. In a letter to the IRS, she characterized her father as "senile" and stated that he had mistakenly sent the check for $7,000 rather than $700. On March 27, 1991, the daughter filed a return for the taxpayer's 1983 liability. The IRS assessed $427 in taxes, and refused the refund request, based on the statute of limitations in IRC § 6511.

The daughter, on behalf of the estate, filed suit against the United States seeking the return of the money her father had paid, arguing the refund claim was not barred because the statute of limitations imposed by IRC § 6511 was equitably tolled due to the taxpayer's mental incompetence. The case ultimately went before the Supreme Court.

The Court unanimously ruled that Congress did not intend the "equitable tolling" doctrine to apply to the Code's time limitations for filing tax refund claims because the limitations in IRC § 6511 were set out with an unusual degree of specificity, indicating that Congress would have specified whether to expand the statute's limitations periods under circumstances such as these. The Court went on to say that "[t]o read an 'equitable tolling' exception into § 6511 could create serious administrative problems by forcing the IRS to respond to, and perhaps litigate, large numbers of late claims, accompanied by requests for "equitable tolling" which, upon close inspection, might turn out to lack sufficient equitable justification." The Court considered the potential impact of this administrative burden on the IRS and observed that Congress accepted occasional unfairness in individual refund claim cases in an effort to maintain a more workable tax enforcement system.

Webb v. U.S.

The taxpayer, a wealthy woman, entrusted the job of managing her financial affairs to her personal physician, a social acquaintance. Her physician retained an attorney to serve as his personal legal counsel. Over the next 14 years, they both physically and emotionally abused the taxpayer and confined her to bed under heavy sedation. During this period of abuse, the doctor and attorney induced the taxpayer to give them complete control of her day-to-day affairs. Each was granted power of attorney, which allowed them to further manipulate the taxpayer's financial affairs.[13]

After directing funds from the taxpayer to themselves, for their own personal benefit, both the physician and the attorney filed gift tax returns reporting the money as gifts from the taxpayer. In 1987, the fraudulent transfers were discovered after a friend intervened and helped the taxpayer break free. The taxpayer filed a refund claim seeking the return of the gift taxes paid. The IRS accepted the basis for the refund claim but denied claims made more than three years after the filing of the gift tax returns, since they were outside the statutory period for a claim. The taxpayer's estate brought suit, arguing that under the circumstances (*i.e.,* physical and emotional abuse and fraudulent transfers from the estate to the physician and attorney) the statute of limitations was equitably tolled. The District Court dismissed for lack of jurisdiction,[14] the Court of Appeals for the Fourth Circuit held that the *Irwin* case did not establish equitable tolling for tax refund suits,[15] and the Supreme Court denied certiorari. This left the taxpayer's estate with no way to retrieve the money wrongfully paid to the IRS.

13 *Webb v. U.S.*, 66 F.3d 691 (4th Cir. 1995).

14 *Webb v. U.S.*, 850 F. Supp. 489 (E.D. Va. 1994).

15 *Webb v. U.S.*, 66 F.3d 691 (4th Cir. 1995).

Congressional Response to the Webb and Brockamp Cases

In response to concerns in Congress and President Clinton's administration regarding the holding in *Brockamp*, Congress in 1998 carved out an exception to IRC § 6511(a) for taxpayers who are financially disabled. Specifically, the amendment suspended the running of the three- or two-year time period in IRC § 6511(a) during any period in which a taxpayer is financially disabled.[16] The amendment states that a person is financially disabled

> if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than [twelve] months.

Further, the amendment provides that a taxpayer must provide proof of such impairment in order for IRC § 6511(h) to apply.

The language in IRC § 6511(h) is similar to that used elsewhere in the tax code. For example, IRC § 22 (a credit for the elderly and permanently disabled) defines "permanent and total disability" as "any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than [twelve] months." It has been speculated that this definition was derived from the statute governing disability insurance payments.[17]

In April 1999, the IRS issued Revenue Procedure 99-21, providing guidance on what needs to be established to show that a taxpayer is financially disabled.[18] First, a taxpayer must provide a signed, written statement from a physician that sets forth:

- The name and a description of the taxpayer's physical or mental impairment;
- The physician's medical opinion that the impairment prevented the taxpayer from managing his or her financial affairs;
- The physician's medical opinion that the impairment either can be expected to result in death, or that it has lasted (or is expected to last) for a continuous time not less than 12 months; and
- To the best of the physician's knowledge, whether the taxpayer was prevented from managing his or her financial affairs during the specific time that the impairment persisted.

16 Representative Jennifer Dunn, a member of the House Ways and Means Committee at that time, considered offering a legislative proposal as an amendment to the 1996 Taxpayer Bill of Rights. This proposal would have included circumstances other than financial disability in which the period for filing a refund claim should be tolled, and did not require that the disability be medically determinable. *See* Ways-Means Approves Taxpayer Rights 2 Measure, Adds Intermediate Sanctions, Daily Report for Executives, Mar. 22, 1996, at G56, available in LEXIS, Legis library, Drexec file. Representative Dunn never offered her proposal as a formal amendment.

17 Bruce A. McGovern, *The New Provision for Tolling the Limitations Period for Seeking Tax Refund: Its History, Operation and Policy, and Suggestions for Reform*, 65 Mo. L. Rev. 797 (2000) hypothesized that the origins of the language can be traced back to Social Security Disability Insurance definition of disabled. *See* Pub. L. No. 89-97, 79 Stat. 286. As originally enacted in 1956, the Social Security Disability Insurance definition of disabled required that the individual's physical or mental impairment "be expected to result in death or to be of long-continued and indefinite duration." *See* Social Security Amendments of 1956, Pub. L. No. 84-880, § 103(a), 70 Stat. 807, 815 (codified as amended at 42 U.S.C. § 423(d)(1)(A) (1994)). The 1965 amendment changed this language to require that the impairment be one that "can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

18 Rev. Proc. 99-21, 1999-1 C.B. 960.

The person signing the claim for credit or refund must also provide a written statement that no person, including the taxpayer's spouse, was authorized to act on behalf of the taxpayer in financial matters during the period of impairment.

REASONS FOR CHANGE

The National Taxpayer Advocate understands the need to set times in which certain actions must take place. These periods give a taxpayer an opportunity to act while providing finality to the tax system. However, ensuring that outcomes are fair, and that taxpayers truly have a genuine opportunity to take the critical action, is an essential component of a fair and just system. Ensuring that the taxpayer truly has an opportunity to file a refund claim is especially important, since filing a claim for refund is the taxpayer's very last opportunity to assert an overpayment. Once that period for claiming the refund has lapsed, the taxpayer can no longer retrieve the money and is barred from court.

Despite Congress's attempt to address the injustices illustrated by the *Webb* and *Brockamp* cases through IRC § 6511(h), the exception's narrowly tailored focus on a medically determinable impairment and the taxpayer's resulting inability to manage his or her financial affairs has failed to protect many taxpayers who lack the capacity to file a refund claim. The following cases illustrate the challenges imposed on taxpayers by this narrow provision, and its equally narrow interpretation by the IRS:

- *Pleconis v. IRS*:[19] The taxpayer sought to suspend the statute of limitations under IRC § 6511(h) for the time when he had undergone five back surgeries and two heart surgeries. In support of the request, the taxpayer submitted a physician statement that specifically said "[t]he surgeries, rehabilitation and pain medication could be expected to have an adverse effect on the patient's ability to carry about business and personal activities." The taxpayer's cardiologist also stated that, because of his medical condition, "there may be adverse effects on the patient's ability to carry out business and personal activities correctly." However, the district court held that these statements did not sufficiently satisfy the requirement that the taxpayer's injury actually prevented him from managing his financial affairs.
- *Redondo v. U.S*:[20] The court found the evidence the taxpayer submitted failed to establish a "financial disability" under IRC § 6511(h) because the physician's statement failed to specifically state that Mr. Redondo was prevented from managing his financial affairs. Instead, the statement said that Meniere's disease and the taxpayer's clinical depression "made managing his daily living, finances, etc., extremely difficult."
- *Green v. Commissioner*:[21] The taxpayer was treated by a clinical psychologist, not a physician, and thus could not document a medically determinable impairment.

These cases illustrate the difficulties that the requirement of a medical determination from a physician can pose and the inappropriateness of requiring a physician to make a global, definitive statement that a taxpayer's impairment prevented him or her from managing financial affairs. The medically determinable

19 *Pleconis v. IRS*, 108 A.F.T.R.2d (RIA) 5704 (D.N.J. 2011). The taxpayer filed a joint return with his wife, and the district court further held that his wife was not financially disabled from filing the claim for refund.

20 *Redondo v. U.S.*, 112 A.F.T.R.2d (RIA) 6092 (Fed. Cir. 2013). The court held that, even if the evidence did comply with the financially disabled requirements (*i.e.*, the impairment prevented him from managing his financial affairs) the claim for refund was nevertheless untimely as it was submitted more than three years after the date the disability ended..

21 *Green v. Comm'r*, T.C. Memo. 2009-105.

requirement precludes use of other types of documentation that can show a taxpayer's impairment, such as a letter from a psychologist or a clinical social worker. Additionally, the proposed revision would obviate the global "all or nothing" statement, which is generally not compatible with the reality of how a disability affects an individual's life.

In many cases a disability can materially limit particular aspects of an individual's conduct, while leaving other aspects, especially the ability to perform simple tasks, untouched or impaired to a lesser degree. This is especially true for individuals who suffer from mental illness. For instance, for an individual suffering from depression, a simple, routine task may pose little anxiety, while a more difficult and complex task (*e.g.*, filing a refund claim) may trigger severe anxiety and be avoided altogether.[22] Thus, a severely depressed person may be able to muster enough energy to pay utility bills after receiving a notice that the utilities will be disconnected if the bills are not paid, but would leave more complex financial obligations unattended.[23] The proposed legislative change will permit the professional making the determination to more fully consider whether the disability affects the individual's ability to perform financial tasks similar to filing a claim for refund. Such a revision will free the professional to provide a statement where simple tasks can be performed, instead of feeling compelled to provide a global statement that he or she fears cannot be fully supported.

The IRS Is Administering Other Provisions Where It Has to Consider the Impact of a Physical or Mental Impairment.

Currently, various provisions require detailed analysis of how an impairment affects an individual's ability to perform and comply with tax obligations. For instance, penalties may be abated where a failure to act, such as failure to file a return or pay tax, was due to reasonable cause and not willful neglect.[24] Reasonable cause has been established in situations where the taxpayer was prevented from acting due to an impairment. For example, in *Wright v. Commissioner*, the court held that a stay in a hospital and a rehabilitation center for an injured leg during the time that the taxpayer's 2006 return was due, in conjunction with the fact that her financial documents were not easily accessible, was enough to establish reasonable cause.[25] The IRS argued that the taxpayer's ability to carry on negotiations with Nationwide Insurance during this time negated reasonable cause, but the court was not persuaded. Unlike the taxpayer showing financial disability under current IRC § 6511(h), this taxpayer did not have to show inability to manage his or her financial affairs due to a medical condition. Instead, the court considered whether the impairment affected the taxpayer's ability to comply with the filing requirement, and whether that failure was reasonable when accounting for the impairment.

Additionally, the IRS considers unique circumstances and weighs all the relevant facts of a case when considering a taxpayer's offer to compromise an outstanding liability on the basis of effective tax

22 Andrew M. Busch, Jonathan W. Kanter, Sara J. Landes, and Cristal E. Weeks, *The Nature of Clinical Depression: Symptoms, Syndromes, and Behavior Analysis*, Behav. Anal. 31(1): 1–21 (2008), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2395346/ (stating that "[d]epression is characterized as much by increased escape and avoidance repertoires as by reduced positive repertoires.").

23 *Walter v. U.S.*, 104 A.F.T.R.2d (RIA) 7761 (W.D. Pa. 2009). The taxpayer in this case suffered from extreme clinical depression for at least seven years and diabetes. The taxpayer's depression prevented him from paying bills timely. Although he did pay some bills on time (*i.e.*, within a month of receipt), he normally paid his bills one to two months late. Further, taxpayer often delayed paying bills until receiving second or third notices or threats to shut off electricity.

24 Treas. Reg. § 301.6651-1(c)(1). Reasonable cause exists when the taxpayer exercises ordinary business care.

25 *Wright v. Comm'r*, T.C. Memo. 2013-129.

administration (an ETA offer).[26] In fact, one of the situations where IRS guidance instructs employees to consider an ETA offer is when a taxpayer is incapacitated and unable to comply with tax laws.[27]

Further, the IRS is obliged to accept information from a variety of sources when verifying an impairment to hire an individual with a disability.[28] For instance, the Office of Personnel and Management permits agencies to accept statements, records, or letters from a Federal Government agency that issues or provides disability benefits, from a state vocational rehabilitation agency counselor, or from a private vocational rehabilitation or other counselor that issues or provides disability benefits, in addition to statements, records, or letters from a medical professional.[29]

As with grants of penalty abatement on the basis of reasonable cause, settlement of tax liabilities on the basis of effective tax administration, which rests on consideration of all facts and circumstances, and as with the hiring process for IRS employees with a disability, which permits consideration of various sources, the proposed revisions to IRC § 6511(h) would allow the individual making a determination a broader framework within which to consider how a physical or mental condition materially limited the taxpayer's ability to manage his or her financial affairs, particularly those financial affairs that are akin to filing a refund claim.

EXPLANATION OF RECOMMENDATION

The current, narrowly tailored exception has failed to protect some taxpayers who lack the capacity to file a refund claim. As has been acknowledged by legal scholars over the years, a better articulated exception with more breadth than the current one will better protect taxpayers.[30]

Replace the Medical Determination Requirement with a Requirement that the Impairment Be Determined by a Qualified Medical or Mental Health Professional.

Requiring that the determination as to the taxpayer's impairment be a medical one does not always result in IRS's receipt of the most accurate and useful information. For example, a taxpayer who is receiving regular counseling and treatment from a psychologist or a clinical social worker would be precluded from submitting a letter from either professional, because it would not be considered a medical determination under the law.[31] This means the taxpayer would have to obtain a letter from a physician who might be unfamiliar with his or her particular case. In all likelihood, the physician would have to base his or her opinion on the psychologist's or social worker's interactions with the taxpayer, rather than on first-hand knowledge. Since the physician would not be personally familiar with the case, the risk of a mischaracter-

26 IRC § 7122(a), and Treas. Reg. § 301.7122-1(b)(3)(ii). A liability may be compromised to promote effective tax administration (ETA) where compelling public policy or equity considerations provide a sufficient basis for compromising the liability. An ETA offer can only be considered where IRS has determined that the taxpayer does not qualify for an offer in compromise on the basis of doubt as to liability and doubt as to collectability.

27 IRM 5.8.11.2.2.1 (Sept. 23, 2008).

28 *Id.*

29 5 C.F.R. § 213.3102(u). For purposes of this regulation, a medical professional is an individual who is duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine. *See also* Office of Personnel and Management, Excepted Service — Appointment of Persons with Disabilities and Career And Career — conditional Employment Regulations, Question and Answers, *available at* http://archive.opm.gov/disability/appointment_disabilities.asp#3 (last visited Dec. 17, 2013).

30 *See, e.g.*, Keith Fogg, *Financial Disability for All*, Villanova Law/Public Policy Research Paper No. 2013-3009 (Nov. 30, 2012), *available at* http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=953107.

31 *Green v. Comm'r*, T.C. Memo. 2009-105. Rev. Proc. 99-21 references 42 U.S.C. § 1395x(r), which defines physician, thereby excluding other medical professionals, such as nurse practitioners and physician assistants. *See also Henry v. U.S.*, 98 A.F.T.R.2d (RIA) 8359 (N.D. Tex. 2006).

ization of the taxpayer's impairment increases, potentially resulting in an improper denial of relief. In this or similar situations, requiring a medical determination may prevent the IRS from having the most useful information on which to base its decision. The proposed change would permit the IRS to revise Revenue Procedure 99-21 to include professionals other than physicians, such as a licensed psychologist, a clinical social worker, or another trained mental health professional.

Replace the Unable to Manage Financial Affairs Requirement with a Requirement that Considers How the Impairment Materially Limited Management of Financial Affairs.

The current requirement that the taxpayer be "unable" to manage his or her financial affairs means that the supporting letter must make an "all or nothing" determination. Requiring such a statement places a large burden on the individual providing the determination letter, and may unnecessarily deter professionals from providing such a letter, since the letter could have unintended repercussions. Specifically, because the professional may know, or believe, that the individual is able to manage simple, easy financial tasks, he or she may feel barred from confidently stating that the taxpayer was unable to manage his or her financial affairs.[32] The proposed revision will allow the professional to more fully consider the nuances of the disability and how it affects management of financial affairs. This will allow the professional to consider the degree to which a taxpayer's ability to perform complex financial tasks (specifically, those tasks that are similar to filing a claim for refund) is impaired.

Replacing the requirement that the individual impairment be medically determinable with a provision that it be determined by a qualified medical or mental health professional and considering material limitations in place of inability will create an exception that more accurately reflects the circumstances and condition of taxpayers who are impaired from filing a refund claim.

32 Although Revenue Procedure 99-21 does limit the physician's statement to "the best of your knowledge," an individual who is confident that the disability prevented the taxpayer from filing a refund claim but believes, or knows, that the taxpayer can undertake less significant financial tasks would be deterred from providing a determination letter.