



## 2003 Meeting Minutes Area 5

- December 8, 2003
- November 10, 2003
- October 4, 2003
- September 12-13, 2003
- August 18, 2003
- July 14, 2003
- June 9, 2003
- May 12, 2003
- April 14, 2003
- March 10, 2003
- February 7-8, 2003
- January 13, 2003

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### **Area 5 Committee Meeting Minutes December 8, 2003**

#### **Opening of the Meeting**

Lillian Woo opened the meeting at 3:05 PM. CT

#### **Roll Call**

Quorum Met

#### **Panel Members Attending**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- Steven Landauer
- Paul Smathers
- Nan Wilson
- Lillian Woo
- Dianne Glass

#### **Absent**

- Lydia Brasch
- Jeana Warren
- Frank Woods
- Kenneth Logan
- John Hollingsworth
- Thomas Seuntjens
- Maria Hermann-Pariente



## Visitors

- Fred Brown
- Steven Bankler

## Staff

- Audrey Y. Jenkins, TAP Program Analyst
- Mary Ann Delzer, TAP Program Analyst
- Sandra Ramirez, TAP Manager
- Sandy McQuin, TAP Manager

## Welcome/Announcements

Woo informed everyone that the Brooklyn TAP staff would be taking over the Area 5 committee in January due to the overload of the current staff. The new Analyst will be Audrey Y. Jenkins, and the manager is Sandra Ramirez who are both on this call.

## Approval of the Minutes

November meeting minutes were approved by consensus.

## Action Items

- Delzer had hoped to have the response ready today but research is not completed. Possibly this week something will be available.
- Mary Ann informed the committee that she had provided Woods with a written copy of the OIC procedures.
- Mary Ann had completed the new roster but had not gotten a chance to forward it. **Jenkins will ensure everyone receives a new roster.**

## Subcommittee Reports

### E-Filing

Hollingsworth was not in attendance to provide a report.

### E-File for VITA/AARP

DeMarais attended a meeting with Terry Lutes, Deputy Chief Information Technology and stated the meeting was very informative. She has also been attending AARP and E-File training. Laura stated that the committee was on target with comments regarding E-File. Woo noted that Landauer also was present at the meeting with Lutes. Landauer told the members that at the meeting with IRS it was said that the IRS could not address the refund anticipation loans at this time because it is not possible to turn off part of the program. The vendors are being told to monitor themselves. Regarding e-file at VITA sites, Woo added that more sites this filing season will use free-file and e-file for individuals. Woo advised the subcommittee that e-file for individuals is such a large component that the sub-committee should look at what issues within that it can handle. If there is too much to look at, Woo said that the Ad Hoc Committee has offered to assist other committees with issues. Steve added that there is a document out now entitled New Vision for IRS, which details financial incentives to preparers/vendors who use e-file (rather than paper filing). Delzer pointed out that the idea of financial credits being given to preparers/e-filers has gone to the Hill several times before and has never gone through. Delzer stressed this is a legislative point. **Woo suggested that sub-committee discuss this issue further.**



### **Correspondence Issue**

Woods was not in attendance to provide a report.

### **Address change procedures**

DeMarais stated she was still working on it and any **support needed will now be Jenkins' responsibility.**

### **ID Theft Impact on IRS**

Delzer set up a call for Bader with Deborah and Verile from Atlanta to talk about identity theft on December 17, 2003 @ 1:00pm CT. Woo informed the committee that the Ad Hoc committee was working on confidentiality with regard to IRS Codes and disclosure of return information by IRS employees. Woo said they may want to compare notes.

### **Audit Methodology**

Seuntjens was not in attendance to provide a report.

### **Accuracy of law law answers**

Smathers looked at the report and thought it was too big of an issue for the committee to take on because it involves training issues and personnel issues. He believes that it doesn't fit within the purview. Motion was made to drop the issue. No objections. **Item was dropped.**

### **Complexity of Depreciation**

Smathers said it is an issue of law, rather than procedure so he suggested the item dropped. Motion was made to drop issue. No objections. **Item was dropped.**

### **Copies of return/transcript**

Warren was not in attendance to provide a report.

### **Direct Capital Gains**

Wilson-two suggestions were discussed with the IRS Forms & Publications Division. From that discussion, Wilson felt the IRS did not understand the issue. The suggestions were: **1** - statement added to the F1040 allowing taxpayers to report Capital Gains on their individual returns although it is at a higher rate, **2** -clarify to the taxpayer the Schedule D instructions on the F1040. Delzer explained that for the first suggestion, the law does not provide for letting taxpayers elect out of the capital gains rate (even if the regular rate is higher). Wilson wondered if it should be dropped then. Woo asked about the second suggestion. Castleberry suggested the item be dropped. DeMarais explained that a new capital gains rate will be in effect and change the related forms. If no objections, Woo indicated it would be dropped. No objections. **Item was dropped.**

### **Forms Testing**

Landauer GAO-3-486 Highlights five forms tested in 2001 using focus groups pertaining to EITC that resulted in an error reduction of 35%. He noted that he IRS has one person out of 103 in the forms department running these tests. Landauer feels there should be more phone calls made and there should be more focus groups. Woo stated that testing forms is a very efficient way to test a form. She also stated that some changes are made or need to be made quickly so there is no time to test them. Woo noted that forms are a very large area so the focus needs to be narrowed. Wilson asked where this item belonged because the EITC-Forms and Publications subcommittee is currently looking at this item. Landauer suggested that the Area was the place for it. Woo explained that individual issues were exactly what the issue committees were looking for. Castleberry clarified the point Landauer was making. The report indicates that the IRS does not believe there is anything wrong with their forms testing. It is not so much an issue of looking at the individual forms but for the committee to look at the IRS forms testing process. Castleberry said he would like to be part of a subcommittee to look at this. Woo directed Landauer and Castleberry to form a sub committee and for others to consider joining. **Landauer and Castleberry will look at generic forms to determine if this item is right**



**for the committee . Woo also stated that the committee would decide in January whether there should be a sub committee established for this issue.**

### **Personnel Issues**

Landauer noted that 50% of the IRS' workforce will retire in the next five years. In the next five years how is the government going to fill the void and provide the technical expertise to the newcomers? Will there be minimal education requirements or a special pay rate requirement? Woo stated that the item was beyond the committee's charter. Delzer noted that GSA determines pay scale and education requirements and there is a trend toward generic job descriptions. Woo stated that she did not think that personnel issues fall within the premise of TAP. Castleberry noted that one needs to look at the consequences of the personnel issues. He used the example of the Offer In Compromise review process. Since IRS consolidated the process and reduced the number of employees working OICs the delays have worsened. He referred to a taxpayer whose OIC was returned, unreviewed. Since it was not considered a rejected OIC, but a returned OIC the Taxpayer Advocate Service did not have any authority to make the IRS review it. Glass pointed out that hiring authority is granted by Congress. The IRS doesn't control that. Woo stated that she believed the committee could make a recommendation to have sufficient staff but not recommendations on minimum educational requirements. Woo noted it could be a large area to review and possibly it could be passed to Ad Hoc. Landauer asked if it was too big for this committee how is it not too big for Ad Hoc? Woo replied that the Ad Hoc had less sub-committees. Castleberry requested a motion to conduct a preliminary review of the issue and report back to the committee. Motion was granted by majority. **Castleberry and Landauer will report back at the next meeting.**

### **Outreach Report**

Bader-did numerous individual outreaches and has determined that the majority of the general public does not know about the Taxpayer Advocacy Panel. She will be interviewed for an article in a local paper, and she was appointed to a SB/SE Committee in TEC.

Castleberry met with a CPA group. The CPAs expressed concerns about the OIC system. It was suggested that the Agents conduct OIC interviews at businesses or homes and issue Forms 433A and 433B forms. A concern is whether this may constitute unlawful search of a person's home/business. Also, the OIC fee of \$150 is very high as well as not refundable whether your offer is accepted or not. There was one incident where a CPA represented a married couple with a \$19,000 bill for the Form 941. They paid the deficiency and the penalties at the time of filing but were still subjected to a levy six months later. After research by the IRS, the taxpayer was told their problem was a result of a computer glitch (one system not speaking to the other). This may have been an isolated incident. He will follow-up to see whether it is systemic or not.

DeMarais had AARP, VITA and Spec E-File Training using Tax Wise. She is also going to participate in E-File using Tax Wise with a multi-cultural group.

Landauer was at a presentation by TEC/SPEC to practitioners, which was not well received. He and Betsy Fallacaro, the Iowa Local Taxpayer Advocate both attended.

Smathers met with a LITC person who is concerned about the OIC fee. Woo said the OIC application was in the parking lot but can be revisited in January.

Woo attended a Tax Alliance conference with approximately 150 practitioners. Only three knew about the Taxpayer Advocacy Panel. She stated that TAP has to do a lot more reaching out to the public.

### **Office Report**

Delzer suggested the panel hold its face-to-face meeting in St. Louis instead of Oklahoma City due to flight availability. Woo suggested the date of the meeting be changed from February 12, 13 and 14 to February 5, 6 and 7 so that Bader can attend. No objections. Meeting will be in St. Louis, February 5,



6, and 7. **Audrey will be working with Linda to get suggestions of hotels that meet the rate, etc.**

**Area 5 passed this resolution:** Whereas Mary Ann Delzer and Patti Robb have provided outstanding support for Area 5 during the past year, and whereas they have assisted us immeasurably in our TAP mission-enabling us to research and elevate recommendations to the IRS-and whereas they have added dimensions of good nature, good humor, and excellent professionalism to our efforts, and whereas Sandy McQuin, Nancy Sitzburger, and Marge O'Brien have guided us with good counsel, be it resolved that TAP Area 5 extends to Mary Ann, Patti, Sandy, Nancy, and Marge our great gratitude and appreciation.

#### **Public Comment**

Mr. Fred Brown from El Paso, Texas-says he is curious about how California's requirement that all e-file preparers be registered will impact. He also finds it curious that IRS does not do independent testing, such as Microsoft does. He stated that he agreed with the comments on the personnel, budget and the confidentiality problems that the IRS and the government as a whole are experiencing.

Bankler informed Delzer that he was unable to retrieve October meeting minutes from the improveirs website. **Delzer will email him the minutes directly and look into the problem** . He also requested a copy of the action items (agenda).

#### **Closing assessment**

Woo instructed everyone to reinforce their comments on the SAMS website in regard to the OIC issue. Next meeting is Monday, January 12, 2004, 3:00 PM CT. Have a good holiday. Meeting was adjourned at 4:20CT.

#### **Action Items**

- **Audrey will ensure the members receive a new roster.**
- **Jenkins will work with DeMarais in regard to the address change procedures.**
- **Castleberry and Landauer will look at the forms testing process to see if this item is right for the committee.**
- **Jenkins will be making the February Face-to-Face meeting arrangements.**
- **Delzer will email Bankler the November meeting minutes.**
- **Committee will determine whether there should be a sub committee established for the forms testing process.**
- **OIC issue determined out of parking lot to active.**



## **Area 5 Committee Meeting Minutes November 10, 2003**

### **Present:**

- Linda Bader
- Patrick Castleberry, Acting Chair
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Steve Landauer
- Tom Seuntjens
- Nan Wilson
- Frank Woods, Jr.
- Dianne Glass, DFO

### **Absent:**

- Lydia Brasch
- Paul Smathers
- Lillian Woo

### **Visitors:**

- Steve Bankler
- Ken Eichner
- Billy Hubbard, Territory Manager, SPEC

### **Staff:**

- Marge O'Brien, Acting TAP Manager
- Patti Robb, Note Taker

### **Welcome/Announcements/Review Agenda**

Castleberry announced that he would be the acting chair for this call.

### **Roll Call**

Quorum Met.

### **Review/Approve Minutes**

Minutes approved by consensus.

### **Subcommittee Reports**

Bonnie Grove, Program Assistant, called to inform the committee that Terry Lutes, Deputy Chief Information Technology, was called away to another meeting and would be joining the meeting late.

Billy Hubbard responsible for central and southern Texas . Have sections dedicated to providing financial literacy tax services to low income or limited English proficiency. They offer banking or financial help. Some provide free financial services. We have a memorandum of understanding with the National Credit Union Association (NCUA). We have no current participation from credit unions at



this time in south central Texas . I have not had an opportunity to see what they can provide. Most major banks will sponsor financial literacy classes if needed. FDIC has been very pro-active in this program. What areas are you interested in?

Bader - what is the money smart curriculum?

Hubbard - Money management, credit management, how to manage a mortgage ownership, home ownership advantages, credit card purchase explanations, how to open a checking account and how to maintain a checking account.

Bader - does it teach anything about tax compliance?

Hubbard - no that is not the focus. I will send out a copy of the smart curriculum. If you have a tie into a financial institutions, please refer the coalition chair name to him.

Castleberry - what are the top challenges you face this year?

Hubbard - maintaining service level of the outreach program, challenging somehow moving out coalition efforts to a more self-sustaining level.

Castleberry - I was not aware of this program until you spoke.

Landauer - do you set up these coalitions as the territory manager?

Hubbard - the territory manager is supposed to be the focal point for these coalitions. I have been able to assign relationship management to some of my senior managers. There is a relationship with the YMCA. They are very interested to have VITA volunteers, and would be willing to provide contact information at the national level. Some YMCAs are prevalently Spanish speaking. If there is an existing coalition, I recommend the YMCA hooks up with an existing coalition. If there is not an existing one in an area, speak to your territory manager and have them speak to the YMCA.

Castleberry - thank you for all your information.

### **Action Items**

1. Glass was going to get this information. Has sent out a message to the information to LTAs requesting that they can contact the TAP members.
2. Still waiting for determination
3. Done
4. Woods contacted Ms. Seward concerning her problem with the Memphis office, date stamping her correspondence and returning it to her with no explanation. Woods inquired of her if she had ever received an explanation.

She responded that she did receive a telephone call from Ms Williams of the Memphis office but did not really get an explanation, only that they have guidelines that they must follow. Woods then wrote a letter to Ms Williams asking her for an explanation as to why Ms. Seward's letters would be returned without explanation and requested a copy of any written guidelines her office has as to handling correspondence, as of this date no reply.

Castleberry stated that he had spoken with Ms. Seward concerning an OIC and he suggested that as a next step he would get permission from her to track a piece of her correspondence.

5. Done
6. Done



7. Done
8. Done
9. Done
10. See Billy Hubbard's report above.
11. Tax Administration IRS Should Reassess the Level of Resources for Testing Forms and Instructions, GAO-03-486, <http://www.gao.gov>
12. Done

### Sub Committee Reports

- E-Filing  
Hollingsworth - had a meeting on October 31, 2003 . Looked at forms. The report was modified and forwarded in the October monthly report.
- E-File for VITA / AARP  
DeMarais - on hold until the proper time.
- Correspondence Issue  
Woods - See action item #4 above
- Address Change Procedures  
DeMarais - got information from the post office. Will need help from Delzer. More work to be done.
- ID Theft Impact on IRS  
Bader - the Senate and House both passed bills last week. One bill cuts out a lot of state's rights. The post office is now getting involved in ID theft. More work to do.
- Audit Methodology  
Seuntjens - got information from Nancy Sitzberger. Still reviewing so will report at the next meeting.
- Accuracy of Tax Law Answers  
Smathers - not on today's call.
- Complexity of Depreciation  
Smathers - not on today's call.
- Copies of Return / Transcript  
Warren - no report at this time.
- Direct Capital Gains  
Wilson - presented two recommendations at the national meeting. They were sent to Nancy Harwell. Needs to be straightened out with her.

**ACTION: Send Castleberry copy of new roster ♦ Robb.**

### New Items

Wilson - would like to work on the OIC issue.

Seuntjens - what happened to the research report?





**ACTION: Delzer will report at December meeting.**

**Outreach Report**

Castleberry - was in contact with Attorney Seward. She is looking for acknowledgement for receipt of requested information and letter.

DeMarais - attended a breakfast meeting with financial planner who does a radio show. Included comments about TAP in the show.

Landauer - visited YMCA and VITA sites. Talked to IRS employees in Davenport .

Warren - spoke to a taxpayer about a notice. Referred to TAS.

Wilson - attended a financial fair. Lots of people there. Handed out TAP material. Shared a table with LITC.

**Office Report**

Castleberry - Delzer sent out the article from Commissioner Everson that the IRS is going to concentrate on enforcement. Any comments?

Seuntjens - I hope to meet with Commissioner Everson when I finish the annual report. I will speak to him about enforcement then.

**Public Comments**

Steve Bankler - went to an IRS walk in office. It is a terribly confusing system. You never know when you will be called. There is a major black hole in the IRS with the OIC process. Your paperwork goes in but nothing ever comes out.

We want copies of the handouts for these meetings.

Ken Eichner - want to reiterate that there are problems with OIC. We need more time to respond to requests from OIC. As far as the acknowledgement situation talked about, I certify all information sent to the IRS. Then you know they received it. I believe estimated taxes affect OIC. The IRS is changing calculations from 60 months to 15 years.

Next meeting is Monday, December 8, 2003.

Meeting adjourned.

**ACTION ITEMS:**

**ACTION: Send Castleberry copy of new roster ♦ Robb.**

**ACTION: Delzer will report on research at December meeting.**



**Area 5 Committee Meeting Minutes  
October 4, 2003  
Area 5 TAP Meeting  
Washington , D.C.**

**Present:**

- Linda Bader
- Lydia Brasch
- Patrick Castleberry
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Steven Landauer
- Tom Seuntjens
- Paul Smathers
- Jeana Warren
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

**Staff:**

- Mary Ann Delzer, Program Analyst

**Welcome/Announcements/Review Agenda**

Woo Welcomed the members to the Area 5 meeting. Reviewed the guidelines for meetings. Consensus is used for decision making and all members should show respect and concern for each other. The Area 5 quorum is 50% of the members plus one.

**Review/Approve Minutes**

Minutes were approved as submitted.

**Action Items**

Woo reviewed each of the Action items from the last meeting.

**Delzer to get names of TEC/SPEC contacts in Area 5 for the October meeting.** This action to be held over for the next agenda.

**Glass to report on Area 5 LTA actions at the October meeting.**

Glass contacted the Local Taxpayer Advocates in Area 5 to discuss the TAP related outreach they did last year.

Joe Zelle, MS He has had the opportunity to work with Bader.

Bestsy Fallacaro , IA Did meet with Bigger prior to her moving. She has also spoken with Landauer.



Bill Greer , ND Smathers had worked with Greer and was invited to the SRLMC meetings. Laurine Ford, new LTA, has not yet reported.

Marian Adams, KS and Lori Mings, Kansas City Campus Both have worked with Wilson and she was included in the SRLMC meetings.

Barry Bjornson, MN Seuntjens and DeMarais have been included in the SRMLC activities.

Mark Clingan, Austin Campus--Attended the Dallas Area 5 meeting.

Vickie Cross, SD-Hollingsworth was included in the SRMLC meetings.

Cecelia Scott , OK Will report November meeting.

Laurel Cummings--Will report November meeting.

**Sitzberger to pursue NTA/IRS written determination about the subcommittee meeting being open meetings.** Inquiry has been made and are still awaiting the advice from the NTA Counsel.

**Woo to send forward AMT/6251 Form and Instructions recommendations to the Joint Committee meeting in October.** Recommendation to be discussed at the October 21, 2003 Joint Committee meeting.

**Frank will call Janell Seward in regard to letter of September 2, 2003.** This action to be held over for the next agenda.

**Delzer to prepare a cost comparison for Kansas City, St. Louis, Oklahoma City and Omaha .** Glass reported on the cost comparison that Robb prepared. After discussion, the meeting locations for the face-to-face meetings were chosen.

- February 12-14, 2004 , Oklahoma City , OK
- June 10-12, 2004 , Omaha , NE

**ACTION: Delzer to email Outreach Report to the committee**

**ACTION: Woo to contact McQuin regarding National Office contact with Bigger and Logan and their status on the TAP.**

### **Introductions**

Committee introduced themselves to each other for the benefit of the new members.

### **Annual report/Self assessment**

The committee discussed and reviewed the draft annual report prepared by Woo.

Seuntjens requested more detail of the outreach completed. In the TAP Annual Report, he would like to report on direct encounters of significance. The members of Area 5 have made the following outreach contacts.

- Taxpayer Advocate Service/Local Taxpayer Advocates: all members



- Stakeholder Relationship Management Council: 8 members
- Nationwide Tax Forums: 3 members
- Taxpayer Education and Communication: 3 members
- Stakeholder Partnerships, Education and Communication: 7 members
- Congressional Liaison meetings: 5 members
- Congressional Offices: 5 members
- American Association of Retired Persons: 2 members
- Community based organizations: all members

Castleberry shared that the media workshop was very valuable. Delzer asked if the committee would be interested in having this training at the February face-to-face meeting. Seuntjens stated the materials should be distributed all panel members

**ACTION: Delzer to request from National Office the media workshop for the February meeting.**

**ACTION: Woo to send her media workshop notes out to the committee.**

In discussing disappointments, Castleberry expressed his concern about the NTA's behavior and harsh statements. Panel should be treated with the respect she expects from them.

Seuntjens did discuss his concerns with the NTA and she agreed she was in error to have that tone with the members.

Hermann stated the committee needs to take the negative aspects and see as room improvement. Convert the negative to opportunity.

DeMarais thought another disappointment that should be listed between A. and B., was the lack of contact with the members by the LTAs. Herman and Smathers stated they had the opposite experience. Wilson agreed that the contact with the LTAs was less than expected.

DeMarais also expressed concerns over staff turnover. Herman stated that staff vacancies were a problem. Wilson recommended staff vacancies be added the C., member vacancies.

Woo led the discussion of the overall grade. Consensus reached was to record a 7.

Seuntjens requested Woo list herself as Chair and author.

**Report was approved as amended. (See Attachment One)**

### **Subcommittee Reports**

#### **AMT Wilson**

Recommendation for changes to the AMT form was accepted at the last meeting and the Joint Committee will discuss today. Sitzberger did send the recommendation to Erickson as he was interested to see what changes could be included in for this next filing season. Bader reminded the committee that they can continue to pursue the legislative concerns by contacting their Congressional offices as citizens. Wilson shared a Kiplinger article with the committee on AMT, dated October 2003. Issue to be considered closed.



**E-Filing Hollingsworth**

The sub-committee presented six proposals for discussion. Those which relate to the original Free-File Recommendation refer to 2003-03.

1. Eliminate Refund Anticipation Loan Solicitation by Alliance Members- DeMarais (Attachment Two)

Concern is for companies in the Alliance who market RALs with Free File e-filing. Turbo Tax will not market the RALs for the next filing season. Recommendation asks that other Alliance members follow suite. RALs charge very high fees for a ten day loan. Added precedent of the new MN law hoping federal government might follow suite.

Approved as submitted

2. State Income Tax Filing Within the Free File Alliance Partnership Seuntjens (Attachment Three)

Add state income tax filing to the Free File partnership as a service and convenience for taxpayers. When negotiate with alliance members, include state filing for free. Vendors do have many of the states in their offerings on their web sites. This offering will help IRS achieve goal for 2007 of 80% returns e-filed.

Approved as submitted

3. Records Retention of Individual Tax Returns within the Free File Alliance Partnership-Seuntjens (Attachment Four)

Hidden charges are encountered in free e-filing as a fee charged to download, print, or archive the tax return. IRS requires record keeping so the Alliance should offer record retention for free. Need the information for the following year to e-file.

Agree to an amendment to the Statement of Problem

although the IRS does not require it is prudent to

the individual should archive, but this is has not been incorporated as a free service by the free file alliance

Castleberry For the Alliance members, this is a revenue source. They need to recoup the cost.

Seuntjens--They have fee structure, but TAP needs to advocate for the taxpayer. The Service should negotiate a better deal with the Alliance .

Castleberry --Do we know about their revenue model to know that this is sensible? Have we covered the entire equation?

DeMarais Need to look from the Taxpayers perspective. IRS says it is free. When leaving the IRS site for a commercial site and then enter all your data just find out a payment is needed. Really not free file.

Warren-- Not free and so is misleading to the public.



Hollingsworth Companies are there to make money and we are aware of that concern.

Seuntjens--May not be viable with the companies, but business analysis is for later.

Castleberry Name is inaccurate and I will support the consensus on the recommendation.

Woods--Need to make a change to the Proposed Solution--

Seuntjens In the last sentence amend to say, additional cost to maintain the appropriate records. First sentence, amend to strike the word all and pdf as the methodology

Landauer--What if no members will participate with the additional cost?

Seuntjens Need to advocate for the taxpayer. Should have e-file, but may be other ways to do that. Maybe the Alliance not the best way to handle that. Not the only solution. Maybe IRS should use one vendor.

DeMarais--Other ways available to market their products.

Hollingsworth One way to negotiate the issue. Looking at what we would like to see. Want somebody on the negotiation team committee to protect the taxpayer.

Approved as Amended

4. Survey of Costumers Hollingsworth  
(Attachment Five)

Looking to measure how easy it is to use the Free File Alliance. Looking for ways to tell how the site could be fixed and improved. Feel is was something bargained away in the initial agreement. Questions designed to identify potential problems. Would be posted at IRS site and so taxpayers would have to come back to be able to do the survey.

Smathers--More of a service survey. That would enhance anonymity of the provider. In other words, how did you like the experience as a whole. Like the ideas of going back to the IRS website

Bader--Will many people really use? More would act on the survey if not leave the vendor site.

Hollingsworth True. Only people with real concerns will go back to the IRS site. Would be nicer to have on the vendor site but there are concerns about rating the vendors.

DeMarais--This is a way to give feedback on the Free File. If feedback given directly to the provider, would breach the contract.

Amended Subject line: E-filing user survey. Also questions 1, 4, 7, 11, and 15 to be reworked as yes/no questions.

Approved as Amended

5. Hidden charge within the Free File Alliance and the Schedule C--Hermann  
(Attachment Six)



Use taxpayer profile in the Wizard, or other gateway, to disclose fees up front for additional 1040 schedules or forms.

Approved as submitted

6. E-File and the unbanked Hermann (Attachment Seven)

After discussion of the issues, the recommendation was tabled for further study.

**ACTION: Delzer to forward to the committee, the Financial Literacy recommendation previously sent forward.**

**ACTION: Glass to research the banking issues that SPEC is currently working. To report for November meeting.**

### New Issues

- E-File for VITA/AARP-DeMarais-Continuing to work the issue
- Correspondence issue-Woods-Will report November meeting
- Address change procedures-DeMarais-Continuing to work the issue
- ID Theft impact on IRS-Bader talked to the LTA at the call site (400 telephones) and was advised this is a real problem will work to develop the issue further
- Audit Methodology-Seuntjens thanked Sitzberger for the research. Will report out in spring.
- Accuracy of tax law answers-Smathers- Will report November meeting
- Complexity of Depreciation-Smathers to report January/February meeting.
- Direct Capital Gains reporting-Wilson shared the completed report.

Wilson- Report as completed-([Attachment Eight](#))

**ACTION: To allow more thought on the issues, will carry forward to next meeting and discuss in November.**

- Copies of return/transcript-Warren- Will report November meeting

Landauer-Came to the committee with the charge to improve customer service satisfaction. Looks like committee is rehashing old issues, re-doing EITC or AMT. Need to look at the process rather than the form. Why doesn't someone get this the first time? Beta test the forms. Send to 100 people and have them do them. Maybe problems would not happen.

Called local congress office and gave my concerns to them. In a service organization the people are the primary resource. Need to address the personnel issues. Why do this over and over again, just write reports nobody has acted on. Need to address the reasons why not getting the right people in the right places. Need look at reports already done why problems not addressed. Discussed Vision for a New IRS, article handed out. Look to the Oversight board. Looks like just getting the same report as everyone else and need to look at the process. Properly evaluate people. Right people at the right places. Pay or training.

Wilson -What is the source of the article. What commission

Landauer-Received form Grassley's office and this section is on personnel.



Seuntjens- TAP is not meant for management or oversight. TAP reports to Treasury and looks from the taxpayer point of view. Not management or practitioner view. We are the grassroots concerns.

**ACTION: Landauer to send the complete report to the whole committee.**

**ACTION: Delzer will send out new roster for Area 5 when available.**

### **Office Report**

Delzer reminded the members to complete their expense report so travel vouchers can be timely filed. Delzer requested each panel member to sign the Volunteer Agreement and return to her. Lastly requested everyone to complete the meeting satisfaction survey and return to her.

### **Closing/Assessment**

Meeting Adjourned.

### **Attachment One**

TAXPAYERS ADVOCACY PANEL  
ANNUAL SELF-ASSESSMENT REPORT

Committee Name: Area 5  
Reporting Period: October 2002 to October 1, 2003

Committee Purpose/Scope: Identify, research, and recommend changes to IRS administrative procedures or IRS regulations that affect a large number of taxpayers in the area. In addition, when a taxpayer problem can only be resolved through amending existing law, the area members will send their findings and position to the NTA.

Issues Under Current Consideration: AMT; Individual E-file; Address change procedures; Identity theft; Audit methodology; Accuracy of IRS responses to questions about tax law; Complexity of depreciation; Form for Schedule D-Capital gains; Taxpayer requests for copies of his/her own filed tax returns.

Actions:

- Members are currently researching the above issues, which were adopted at the Dallas meeting in September.
- Area 5 met monthly by teleconference; met twice face-to-face after the initial October 2002 meeting.
- AMT & E-file subcommittees have shared information, analyzed the issues, discussed solutions, developed recommendations through teleconferences and email.
- AMT subcommittee researched legislation on AMT, reviewed and prepared recommendations for revising instructions for Form 6251

Issues Tabled for Further Study: Offer-in-compromise; Levies; Complexity of real estate; Processing of amended returns; Walk-in service.

### **Accomplishments:**





#### **A. Issues:**

1. Joint Committee approved and elevated to IRS Area 5s E-file subcommittee recommendation for inclusion of TAP member(s) on FreeFile review panel.

2. Area 5 AMT subcommittee sent to NTA its recommendations to correct the inequities of AMT by a) indexing exemption amounts and phase-out amounts of AMT for at least 10 years, and b) allowing the inclusion of Schedule A deductions, standard deductions, and personal exemptions when calculating income that is subject to AMT.

While reinforcing the NTA's position on AMT, the AMT subcommittee feels that this issue must continue to be a top priority because of the rapidly increasing number of taxpayers who will be affected.

3. Area 5 AMT subcommittee, at the suggestion of Bob Erickson of IRS Forms and Publications, recommended revisions to AMT Form 6251-Instructions for Individual Taxpayers so that it will be more easily understandable by the taxpayer. This recommendation has been forwarded to TAP Joint Committee for approval prior to formally sending it to Erickson. Meanwhile, Erickson is currently reviewing the recommendation in the event that the changes can be adopted in time for the next tax filing year.

#### **B. Membership activities: OUTREACH**

Because of vacancies and other circumstances, only 11 Area 5 members were active. There were the following contacts/meetings with IRS: IRS media offices-5; LTAs-14; SRMLC-12; TEC/SPEC-5; IRS offices-2; VITA-3; TAS-2. There were the following contacts/meetings with government offices/events: congressional offices-15; congressional liaison meetings-8; congressional forums-2; tax Forums 3 (1 in August in St. Louis and 2 in September in San Antonio).

In addition, there were the following outreach activities:

Interviews with media-35; press releases-14; communications with individual taxpayers-5; speeches to professional associations-7; speeches to civic groups-8; meetings with local coalitions-3; work at local sites-24; authored articles about Area 5, E-file, AMT-3.

Members of the public attended area face-to-face meetings in fairly good numbers. Members of the public have also regularly attended the monthly teleconferences.

#### **C. Membership activities: ISSUES**

Area 5 discussed over 58 issues. These included the carryover issues from the Midwest CAP as well as those identified through the toll free calls, comments on the website, and correspondence from taxpayers. Public participation at our teleconferences produced 24 comments on a wide range or issues, and our two face-to-face meetings produced attendance and comments from nine members of the public. Many new issues were raised by the public.

We did preliminary research on a large number of the 58 issues, but because we were not at full membership strength, we decided to delve deeply into two issues and make recommendations based on our research.

As a result of our September 2003 meeting, we are researching 9 new issues actively and have placed 5 on hold. The issues were identified through the Area Dallas base data as well as through the monthly data reports from Milwaukee.

#### **Disappointments**

A. NTA. Members feel that the NTA's office has not forwarded Area 5's recommendations, has not acknowledged receipt of the recommendations.

B. LTA. Members felt that contacts with LTAs were less than expected. While some members have had a very good relationship with LTAs, the overall contacts by other members has been spotty.



C. Outreach. While the activities with IRS components were excellent, the outreach to civic groups, professional associations, coalitions, and taxpayers was far more modest than members' expectations.

The members feel that very few people and organizations know about TAP's existence or mission, there is a lack of materials about TAP, TAP has not contacted civic and professional organizations and informed them about TAP members in their states. There has not been enough TAP support to help with outreach.

Federal government agencies and workers don't seem to know much about TAP either. There is a great need for internal education about TAP.

C. Vacancies. Members feel that our area operated at a great disadvantage because of the delay in filling vacancies.

Members also felt that the changes of support staff during the year has disrupted continuity and the development of good working relationships.

D. TAPSpeak needs work.

E. While Area 5 has probably had more public participation in its meetings than other TAP committees, the members would like even more public involvement.

Overall grading: 7

TAP started something important. There was nothing nationwide before TAP, and we are developing the process to work with the IRS, agencies, and the public. Once issues are identified, the members run with them by researching and forwarding recommendations. We have devoted a great deal of time in the development of the process, and we are pleasantly surprised by its productivity.

Author: Lillian Woo  
Date: October 9, 2003

## **Attachment Two**

TO: Area 5 Committee  
FROM: Area 5 E-file Subcommittee  
DATE: October 4, 2003  
RE: FreeFile Alliance Partnership;  
TAP Recommendation 03-003

### **Subject**

Eliminate Refund Anticipation Loans (RALs) Solicitation by Alliance Members

### **Background**

Many tax preparers who file taxpayers' returns electronically, including FreeFile Alliance members, view RALs as immensely profitable. For over a decade, RALs have been marketed by preparers to taxpayers who want their cash quickly; the cash advance is offset by the anticipated tax refund. This method allows taxpayers to have their refund in hand within a day or two of having their taxes completed. Before electronic vendors, a taxpayer would visit a tax preparer's office in person, then the return would be completed and sent in.



### **Statement of Problem**

With the advent of FreeFile, the entire computation and transaction can be completed on-line, without giving the taxpayer an opportunity to ask questions or gain clarification before acceptance. Often taxpayers don't understand that the regulations of future terms and payments are defined by the RAL contract. First, the taxpayer (now, the borrower) pays a fee for the opportunity to get his or her money in advance. If everything goes right, the short-term loan will be paid back by the tax refund. On the other hand, if the refund is delayed or disallowed, the debt becomes a long-term loan with a prescribed payment plan. Often RAL's can result in borrowers paying interest rates that are effectively in excess of 100%.

FreeFile Alliance members are currently able to market RALs without restraint to the customers who select their tax preparation services. In fact, many of the Alliance members have targeted low-income taxpayers for their market share--people who often want quick cash to pay off bills or buy a car. Unfortunately, many of these low-income taxpayers are filing for refunds and credits meant to provide additional support for their families, money which goes instead to pay for tax services. In 1999 approximately \$1.75 billion of the \$30 billion of the Earned Income Tax Credit (EITC) was funneled off by preparers and lenders.

### **Proposed Solution**

Because of the complexity involved in the transaction and the inability for full disclosure of the terms on-line, Free File Alliance members services should not include RALs. NTA Nina Olson voiced her support for the proposal that FreeFile Alliance members should not be allowed to sell RALs to their clients. Regardless of the clarity of IRS disclaimers, taxpayers will link the IRS to these product offers, she said in her National Taxpayer Advocate's Report to Congress, Fiscal Year 2004 Objectives.

Intuit, the most-popular provider of on-line software products (TurboTax), has recently announced that it will discontinue offering RALs through all its consumer products. This will include the company's preparation of tax returns through the Free File Alliance.

Additional support for this proposal is provided by recent Minnesota legislation regulating RALs in face-to-face settings. This legislation will apply to paid preparers who offer refund anticipation loans for the upcoming (Tax Year 2003) filing season. It paves the way for other states as well as federal legislation in this area. Some of the provisions include:

- (1) A NOTICE in a large font for easy reading that discloses that the money is a loan, the annual percentage rate (APR), the amount the charges will reduce the refund, additional charges incurred if the refund is delayed, and the statement You can get your refund in about two weeks if you file your return electronically and have the IRS send your refund to your bank account. You do not need to pay for a loan to get your refund quickly.
- (2) standards of conduct for paid preparers who prepare more than six returns and are not in an employee/employer relationship,
- (3) required disclosures in writing, signed and dated by the preparer and client,
- (4) a bill itemizing charges for return preparation, electronic filing and related to the RAL,
- (5) penalties, which may include up to \$1000 per violation and termination of the authority to electronically transmit returns, and
- (6) the opportunity to pursue civil action, including damage awards which may include attorney fees, court costs, as well as actual damages.



Perusing the provisions of the Minnesota legislation, it becomes clear that a face-to-face meeting between the tax preparer or lender representative is necessary for the complex mutual communication required in this transaction. Anything less leaves the taxpayer with unanswered questions.

### **Conclusion**

FreeFile Alliance members must follow the lead of Intuit and eliminate the marketing of RALs to on-line consumers. The IRS needs to set the standard to limit this service, as the intricacies of the on-line loan are confusing to taxpayers.

Clients in this transaction are unable to ask questions, gain clarification or other meaningful feedback from the preparer at the time they sign up for the on-line loan. If taxpayers do not understand or misread the on-line contract, they will suffer the consequences of their actions.

### **Attachment Three**

To: Area Five Committee  
From: Area 5 E-file Subcommittee  
Date: October 4, 2003  
Re: FreeFile Alliance Partnership;  
TAP Recommendation 03-003

### **Subject**

State income tax filing within the FreeFile Alliance Partnership

### **Background**

With the 2002 filing season, the IRS instituted FreeFile as a new electronic system for filing individual taxes. By partnering with 17 Free File partners and thru an alliance with these partners, the IRS has increased the number of e-filers substantially over 2001. However, Mr. Terry Lutes has indicated that the IRS will still not meet the 80% goal of free filing as set by Congress in 1998. The TAP Area 5 E-file Subcommittee would like to help the IRS meet the free file goal set by Congress and advocate truly free and easier free filing service for our taxpayers.

### **Statement of Problem**

Most states have a state income tax and also accept an electronic version of a state tax return. Many of the 17 IRS FreeFile Alliance partners also have the software available to serve the taxpayer needs in filing their state returns. However, the IRS FreeFile Alliance service does not address the individual's responsibility to prepare and file a state tax return. Many the state tax returns use a basis from the federal tax return and ideally lend its completion as one complete tax preparation process, federal and state. Many Alliance partners allow the taxpayer to proceed to electronically file their state return but charge a large fee (\$30 or more). A simple fact is that if the taxpayer owns a computer they could purchase the complete federal software package (for less than \$30) from a number of software vendors and they will also give the taxpayer the state tax return free of charge. Some states are also duplicating efforts, already established by the IRS, by implementing their own independent FreeFile Alliance for state returns.

### **Proposed Solution**

The IRS should negotiate immediately with the participating FreeFile Alliance to provide free service to taxpayers including state returns when the taxpayer meets the stated IRS Wizard requirements at the beginning of the vendor selection process. For the IRS to inform the taxpayer that they can file free only to discover at the end of the process there is a fee is unfair to the taxpayer. If the IRS cannot renegotiate the alliance agreement to include the filing of the state return until a later date, then



information must be added to the IRS Wizard process to accurately inform the taxpayer the cost to comply with both federal and state filing requirements.

### **Conclusion**

FreeFile is an initiative created to help the IRS reach its and Congress's goal of 80% of all returns will be electronically filed in 2007. To help achieve this goal, the IRS will need to remove the hidden costs that are currently buried in the service by the FreeFile Alliance Partners to generate revenue. Future success and sustained growth of individual e-filing depend on it.

### **Attachment Four**

To: Area Five Committee  
From: Area 5 E-file Subcommittee  
Date: October 4, 2003  
Re: FreeFile Alliance Partnership;  
TAP Recommendation 03-003

### **Subject**

Records retention of individual tax returns within the FreeFile Alliance Partnership

### **Background**

With the 2002 filing season, the IRS instituted FreeFile as a new electronic system for filing individual taxes. By partnering with 17 Free File partners and thru an alliance with these partners, the IRS has increased the number of e-filers substantially over 2001. However, Mr. Terry Lutes has indicated that the IRS will still not meet the 80% goal of free filing as set by Congress in 1998. The TAP Area 5 E-file Subcommittee would like to help the IRS meet the free file goal set by Congress and advocate truly free and easier free filing service for our taxpayers.

### **Statement of Problem**

The IRS requires the individual taxpayer to archive the tax return by either saving the return on PC/disc or by printing a copy and retaining the return for at least 3 years. This IRS requirement has not been incorporated as a free service by the FreeFile Alliance. The alliance vendors do allow the taxpayer to archive and/or print the return but for a substantial fee (\$30 to \$50). The committee believes that this fee is taking advantage of the naïve taxpayer and many that are using the FreeFile service have an understanding that that all IRS requirements are FREE. The cost to retain a filed electronic tax return on the FreeFile system is preventing many taxpayers from requesting the required retention and if and when the taxpayer is selected for an IRS audit, they will not be adequately prepared to present their documentation. If a copy of a prior tax return is needed, the IRS charges \$39 for a copy. In addition, the taxpayers need to refer to the previous year's filed tax forms to complete the next year's taxes in a consistent and timely manner. Thus a hardcopy downloaded, possibly as text files only, from the FreeFile site is most desirable. A simple fact is that if the taxpayer owns a computer they could simply purchase a complete software package from a number of software vendors that allows them to save their return in electronic version and/or allows the printing of the return for a much smaller total price. Also, all VITA services gives those qualified taxpayers that are using this service free copies of their tax returns.

### **Proposed Solution**

The IRS should negotiate immediately with the participating FreeFile Alliance to provide *all* IRS requirements free to taxpayers including archiving and printing, as a PDF file, when the taxpayer meets the stated requirements on the IRS Wizard entry process. For the IRS to inform the taxpayer that they can file free only to discover at the end of the process there is a fee for tax return retention is a bait and switch which generates revenue for the Alliance participants and is unfair to the taxpayer.



If the IRS cannot renegotiate the alliance agreement to eliminate this retention fee until a later date, then information must be added to the IRS Wizard process to accurately inform the taxpayer the cost to fully comply with IRS tax filing requirements.

### **Conclusion**

FreeFile is an initiative created to help the IRS reach its and Congress's goal of 80% of all returns be electronically filed in 2007. To help achieve this goal, the IRS will need to remove the hidden costs that are currently buried in the service by the FreeFile Alliance Partners to generate revenue. Future success and sustained growth of individual e-filing depend on it.

### **Attachment Five**

To: TAP Area 5 committee members  
From: John Hollingsworth  
Individual E-file subcommittee  
Date: September 27, 2003  
RE: FreeFile Alliance Partnership TAP 03-003

### **Background**

The Internal Revenue Service instituted FreeFile as a new electronic system via the Internet for filing individual taxes during the 2002 filing season. By forming an alliance with seventeen private providers of electronic tax preparation, the IRS has increased the number of e-filers substantially over the 2001 tax season. However, Mr. Terry Lutes has indicated that the IRS will still not meet the goal of having 80% of the tax forms filed electronically by the 2007 tax season as set by Congress in 1998. The TAP Area 5 e-file subcommittee would like to help the IRS meet this goal of a truly free and easier method of tax filing for our fellow citizens.

### **Statement of Problem**

During one of our meeting, Mr. Paul J. Mamo of the Internal Revenue Service addressed our subcommittee about the formation of the FreeFile Alliance Partnership. One glaring weakness of that original agreement was the **lack of taxpayer feedback** concerning the ease of 1) selecting a FreeFile provider, 2) filling out the required information for that provider, and 3) finding out at the end of the process that they were not eligible or that there were unrevealed cost for completing the process.

Mr. Mamo indicated that the FreeFile Alliance members were concerned that the IRS would use the feedback from the taxpayers to rate' the Alliance members. As stated previously, Mr. Lutes has pointed out the goal of 80% efiled returns by the tax year 2007 will not be achieved. While the IRS has advertised heavily this new free' method of filing taxes, one of the questions raised is Why have not more taxpayers made use of this free' method?''.

### **Proposed Solution**

The TAP Area 5 Individual E-file subcommittee believes that the IRS should negotiate immediately with the FreeFile Alliance members the right to survey the taxpayers who use the FreeFile electronic filing method. The feedback gathered should not be used in a judgmental critical way. However, it should be used to respond to the needs of the actual current users of the FreeFile electronic method to make the system more user-friendly and understandable. The new and improved electronic filing method would attract repeat and new users and, thus, it would ultimately help the Internal Revenue Service achieve the electronic filing goal as set by Congress.

The subcommittee members believe that the survey instrument should be placed on the [www.irs.gov](http://www.irs.gov) site and that a request to fill out this survey by coming back to the IRS website be included with the



present warning when the taxpayer leaves the IRS website. A sample of the type of opinion survey is attached to this memo.

**Conclusion**

To achieve the 80% goal of electronic filing set by Congress, the Internal Revenue Service must first determine why a greater number of taxpayers are not taking advantage of the FreeFile Alliance method of filing their individual taxes. The reason why cannot be fixed or eliminated until the IRS receive systematic feedback from the users of the current electronic filing method.

**E-filing User Survey**

With 1 indicating the Highest level of Agreement and 5 indicating the Highest level of Disagreement, please respond to the following statements.

1. This is the first time that I have file my federal income tax using E-File.	1 2 3 4 5
2. The Gateway Wizard on the IRS site that determined my eligibility to use E-File was easy to use.	1 2 3 4 5
3. The instructions on How to e-file on the Free Alliance site that I used were difficult to understand.	1 2 3 4 5
4. I had to have someone help me complete my taxes using E-file.	1 2 3 4 5
5. I was able to e-file my taxes in one session at the Free Alliance member's website.	1 2 3 4 5
6. I found using the Gateway Wizard to determine my eligibility to e-file to be confusing.	1 2 3 4 5
7. I had my refund deposited electronically.	1 2 3 4 5
8. I found e-filing to be harder than doing my taxes by hand.	1 2 3 4 5
9. I had to pay for some additional forms necessary to file my taxes electronically.	1 2 3 4 5
10. I have very little concerns about the security and privacy of my electronically transmitted information.	1 2 3 4 5
11. I made use of the Refund Anticipation Loan offered by the Free Alliance member's website.	1 2 3 4 5
12. I found the offers of paid for services by the Free Alliance member's website to be annoying.	1 2 3 4 5
13. I found the offer of free e-filing by the Free Alliance member's website to be misleading because I had to pay for some forms or services that I wanted or needed.	1 2 3 4 5
14. OVERALL, I found e-filing to be easy to understand and use.	1 2 3 4 5
15. I intend to use E-File again next year.	1 2 3 4 5

**Attachment Six**

To: Area 5 Committee  
 From: Area 5 Free E-file Subcommittee  
 Date: September 24, 2003  
 Re: FreeFile Alliance Partnership; TAP 03-003

**Statement of Issue**

The taxpayer should be informed, before they begin their tax return, of any charges by the free file service providers regarding forms such as Schedule C. Existing techniques in free electronic filing induce taxpayers to approve and pay charges for additional services.



### **Background**

Several panel members while surfing the Free Alliance products to test its reliability discovered that charges may apply. This is not disclosed up front before initiating the e-filing process.

Such marketing approach is a deceiving practice, cumbersome (if taxpayer does not want to accept the charge, time invested in e-filing is lost), may discourage the use of electronic filing and tarnishes IRS credibility. IRS should not be associated with facilitating the practice as existing electronic connection and link implies. IRS existence is to serve taxpayers, protect them and meet congressional goals.

### **Recommendation**

Set up an electronic taxpayer profile on the IRS site (through its Wizard or Gateway) to identify pertinent Free Alliance software that matches taxpayer profile needs. Any additional service fee should be disclosed up front, before initiating the e-filing process. This profile completed by the taxpayer should generate links to those Free Alliance software that best fits taxpayer requirements.

### **Attachment Seven**

To: Area 5 Committee  
From: Area 5 Free E-file Subcommittee  
Date: October 4, 2003  
Re : Setting up of Bank accounts for the "unbanked"

### **Statement of Issue**

Generate alternatives to speed up opening bank accounts in readiness to coming e-filing season.

### **Background**

Last month Nina Olson recommended to the Treasury Department to formally request from financial institutions (Credit Unions, banks, etc) facilitate opening free checking accounts (or for a very low, nominal fee without high minimum balance) to integrate the IRS direct deposit structure in electronic filing as another via to reduce RAL's abuse.

In September, WSJ published that financial institutions formally recognizes and validates opening check accounts under the only requirement to present the ID card provided by Embassies to immigrants, no need to present SS card or Driver License card.

Last year, Bank One offered opening a free check account service as its first pilot program in Dallas.

It is recognized among financial institutions that the volume of overnight deposits is an eagerly look after measurement of success as well as revenue generator. Therefore, for the Treasury department to jump into that wagon in partnership with Financial institutions may facilitate and accelerate the implementation process for next tax season. This is a win-win scenario for all parties involved Taxpayers, Treasury, IRS and Financial institutions.

### **Recommendation**

TAP panel members in liaison with designated TAS representatives should approach local financial associations to hear from them what their roadblocks may be. This input will be used to develop strategies that may expedite implementation. Mary Ann Seltzer and E. Diane Glass (or their supervisor's designees) should be involved in the research and implementation of alternatives, and any other input that may be considered appropriate when presented and revised by Region 5 panel





members. Financial institutions, Treasury or IRS massive media support is needed when rolling implementation to neutralize existing and future misinformation.

## **Attachment Eight**

AREA 5 ISSUE: SIMPLIFICATION OF CAPITAL GAINS REPORTING

DATE: OCTOBER 2, 2003

SUBCOMMITTEE MEMBERS:

- Lillian Woo, Area 5 Chair
- Nan Wilson , Subcommittee Chair
- Jeana Warren

### **ISSUE #1:**

The IRS 800 helpline has received calls from taxpayers with small capital gains distributions who do not have to file Schedule D of Form 1040. These taxpayers questioned whether it is necessary to complete the capital gains worksheet on page 36 of the 1040 Instructions if the tax savings do not justify the time spent. The instructions do not explicitly state that the taxpayer does not need to complete the worksheet.

### **RECOMMENDATION #1:**

At the end of the 1040 Instructions for Line 13, Capital Gain or (Loss) on page 25 of the 2002 form, replace the last two sentences as follows:

Your tax may be less if you use the **Capital Gains Tax Worksheet** on page 36 to figure your tax. However, you do not have to use this worksheet.

### **ISSUE #2 :**

Taxpayers are sometimes confused about how to report the capital gain from the sale of a home and may not realize that it may not be necessary to report the gain on Schedule D. This exemption to the capital gains tax is not addressed in the 2002 1040 Instructions for Line 13 on page 25.

### **RECOMMENDATION #2:**

Add the following paragraph to the 1040 Instructions for Line 13 (page 25 on the 2002 form):

"You may not have to pay capital gains taxes on the sale of your home if the net gain from the sale was less than \$250,000 for an individual return or less than \$500,000 for a joint return. See Instructions for Schedule D to see if you qualify for this tax exemption."



**Area 5 Committee Meeting Minutes  
September 12-13, 2003  
Renaissance Dallas North Hotel  
4099 Valley View Lane**

**Present:**

- Linda Bader
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Tom Seuntjens
- Paul Smathers
- Jeana Warren
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

**Guests:**

- Ken Eichner
- Steve Bankler
- Ben Cox
- Robert Merlo

**Staff:**

- Nancy Sitzberger, Acting TAP Manager
- Mary Ann Delzer, TAP Program Analyst
- Mary Darden, Revenue Officer Technical Advisor
- Gayvial James, Acting Local Taxpayer Advocate, Dallas
- Mark Clingan, Taxpayer Advocate Austin Campus
- William Sonnack, Local Taxpayer Advocate, Houston
- Wilma Williams, TAS Analyst, Dallas
- Gene Moren, Taxpayer Education and Communication
- Olga Rhodes, Area 5 Director, Taxpayer Advocate Service
- Cecilia Scott, Local Taxpayer Advocate, Oklahoma
- Melanie Sturgis, Area 5 Analyst

*Friday, September 12, 2003, 8:00 a.m.- 5:00 p.m.*

**Welcome/Announcements/Review Agenda**

Woo welcomed the group to Texas. The agenda of the day was reviewed. Time will be adjusted for sub-committee meetings to occur earlier.

**Review/Approve Minutes**

Minutes are approved.



### **Self-Introductions**

The panel members, staff and guests introduced themselves.

### **Member Self-Assessment of Outreach**

Woo-Agenda designed for self assessment to build the annual report for the committee.

DeMarais Fortunate to have early contact with local IRS and Working Family Coalition in St. Paul from the beginning. Was invited to meetings to speak on TAP. Appreciated contacts with AARP and was active in outreach in the library forms distribution. Made new contacts through Stakeholder Relationship Management Local Council (SRMLC). Incorporated me as member of group and so was able to make IRS manager contacts. Worked with Working Family Coalition and so able to speak on EITC issues. This gave me perspective broader among community leaders. Looked at RAL legislation in Minnesota. Was satisfied with outreach efforts. Rather than town hall meetings, feel it would better to build on existing meetings/ groups interested in what we are doing. Next year looking to CPA events.

Hollingsworth Have content taxpayers in South Dakota. Did not really do any outreach. Contact with TAS people was invited SRLMC meetings. After initial media, really did not have public contacts with other groups. Recommendation that TAP make fraternal organization contacts at the national. This would generate interest at a larger level rather than members on own.

Warren--Struggled with that part of the commitment to TAP. Did do a presentation for a congressional forum and a tax professionals meeting. Laurel Cummings, LTA in Dallas was an excellent asset in getting me involved. It appears the tax professional groups seem to have own their agendas. Looking to improve my outreach efforts for next year. Attended the Tax Forum in San Antonio. Good opportunity for members to attend the Tax Forums.

Seuntjens Most of time spent on management of TAP. Was easy in St. Paul as TAS was open to work with. TAS local offices can help members organize outreach. Make a connection to those organizations that TAP members should talk with. In October will discuss the communication strategy, so should have more awareness who we are.

Smathers Contacting LTA as the important thing. Participated in SRLMC and tax Professional groups and did one-on-one with practitioners. Also some speaking to local groups on TAP and AMT. Rural state and it is hard to get around to many areas of the state. Members of SRLMC really helped get the message out. Media Specialist Eric Smith was helpful. Is a need for promotional items and the Ad Hoc committee designing a new promotions package. Will be an impressive array outreach material. Staff make contact with national offices of the organizations like Lions, Elks, etc. Satisfaction level a 6, but wish could do more in the four major cities, but distance a problem. Number one issue in North Dakota is agriculture.

Bader Worked with media person and TEC employees. Went to enrolled agents meetings. For Multilingual committee working with minority bankers to help small business people receive the information they need from IRS. Most outreach done for Multilingual committee. Developed an outline for IRS to use when integrating taxpayer for whom English is second language. For instance have 12,000 Bosnians new to St. Louis. Worked with the lead teacher to outline a program that was included in the June report of the National Taxpayer Advocate. For people who are coming to English as a second language classes. Will try to get outline on IRS education website and will present the program at the October meeting. The curriculum focuses on the responsibility to the government, where to go for help, etc.

Wilson Anticipated outreach would be throughout the state, but actually was only in the Kansas City area. Most efforts were around the EITC issue committee. Did speak to a number of groups of IRS employees and congressional staffers. Find no one knows about TAP is little interest on the part of the



public. Need more publicity. Disappointed in the outreach efforts. AARP very interested in TAP did get input from them.

Woods-One formal presentation to a retirees group. Also did an interview for the Texarkana Gazette. Been working on Payroll deposit subcommittee for Issue committee. Looking at payroll tax issues and so interviewed 20 small businessman. Only two really knew about the issues as most used payroll service or bookkeeper. Not very good return from the survey and so not real positive about that outreach. Personally not that interested in outreach. Really want to work on improving IRS.

Seuntjens Balance in the organization. Treasury wanted outreach through Area committees. Work as an Advocate for taxpayers. Need a better balance what we are doing.

Need to look at how we are spending our time. Ask TAS to help identify organizations.

Communications never expected the general citizen to know about tap. Need to have IRS employees know who we are. They can help tie us the other organizations. Outreach the hardest job you will have. The appreciation of TAP will grow over time.

Smathers--Once promotional materials available, outreach will be easier.

DeMarais During library work saw trends. For instance Form 8880 not in standard tax packet. Not at the library and so saw increase of the use of the internet by all age groups. Was able to identify problems/non-problems by working in the public.

Woo Greatest contribution of the Area Committees is discovering the trends/problems unique to our states and get those to the IRS. Should be able to make some impact on the Strategic Plan of IRS. Bring up some hot issues for them to work. This will be only as good as our efforts.

Seuntjens Need to understand the taxpayer issues and be a good listener. Find the trends to work as a subcommittee and get them to Joint Committee (JC). More productive next year when the learning curve over.

DeMarais Encouraged that all members have put their own spin on outreach and what we have been doing. Proud of the impact we have had this last year.

Glass The Area 5 of TAS is meeting next week. Anything to take back to the Area 5 Local Taxpayer Advocates (LTA)?

Seuntjens LTAs should stay in touch with TAP members and ask if they can be of assistance. Should have that contact with the TAP members.

DeMarais After initial contact, would like email updates and invitation to meetings. This make me feel more connected to these groups. Even if can not make all the meetings, would like to contented.

Smathers Help us make outreach connections/opportunities.

Woo Would appreciate hearing about issues coming in to TAS. Would help with identifying trends in the Areas.

Glass Can share reports by office.

Sonnack For outreach in Texas, list made on a quarterly basis. Many other states may have as well.



Moren Taxpayer Education and Communication (TEC) can invite members to meetings. One way members can build those relationships with Chambers of Commerce, cities, etc.

Sitzberger--LTAs can should help make the connections with TEC/SPEC

**ACTION--Delzer to get names of TEC/SPEC contacts in Area 5 for the October meeting.**

**ACTION Glass to report on Area 5 LTA actions at the October meeting.**

DeMarais Recommend round robin outreach report remain on agenda at each meeting. Easier to remember in 6 week period what has been done. Valid to hear and look ideas from the group. Good way to track outreach.

Seuntjens-Need balance the time on the agenda between outreach/public comment.

Hollings Need public to address the group. Better than written/email comments.

### **Public Input**

Bankler Committee should look for comments from professional tax practitioners. Sixty percent of filed returns done by professionals. They see the trends and so should gear outreach to them. Need to improve TAS to get problems resolved. Austin TAS has an answering machine on all. When receive callbacks from employees, they leave the same phone number. Need a direct line to the TAS employee. Wages levied another problem. Problem Resolution Program had the authority. TAS no longer can do anything but negotiate with the functions. Need have more power in TAS.

DeMarais Ideas for venues to reach those preparers?

Bankler--Use SPEC/TEC

DeMarais-What can TAP do for you as a professional?

Bankler Look at issues you pick. For instance AMT can not be solved without legislation. Look at local issues and at customer service issues. Need to be more friendly to public and after each section of agenda have input.

Eichner IRS has CPA hotline, but need TAS hotline for CPAs. Need better response time so can help resolve questions quicker. According to FACA all meetings open to public. I would like to know when other meetings are. OIC program is in shambles. Interpretations of statute a problem. For instance OICs mostly filed after January 1, because taxpayers are not current on estimated tax payments. Can't do it and need keep monthly income in their pockets. The fee of \$150, that begins November 1, 2003, will not be changed.

DeMarais Subcommittees open? Pass on this question to the National Office.

**ACTION: Sitzberger to pursue NTA/IRS written determination about the subcommittee meeting being open meetings.**

### **Sub-Committee Meetings**

See **Attachment One** for subcommittee notes taken.

See **Attachment Two** for DeMarais' submission on RALs.



**Sub-Committee Self-Assessment**  
AMT Wilson

Did send a recommendation to the NTA requesting AMT appear in her Report to Congress again. Now looking at form and instruction simplification. Working with Bob Erickson from Forms and Publications. Erickson advised form was just updated last year. Looking at instructions for improvements.

See **Attachment Three**

**ACTION: Woo to send forward to the Joint Committee meeting in October.**

**Public Input**  
Robert Merlo, Dallas

Talk about AMT and incentive stock options (ISO) and how it hurt me substantially. Legislative action needed. Have been writing letters and lobbying Congress. No bills have come to pass. Worked for a company with ISP for compensation. December 2000 purchased the options, 46 shares, paid \$9000.00 and so capital gain \$23.00 a share. AMT tax of \$1 million. Went down to \$9.00 a share by April 15. Owe \$200,000 in additional tax, but never sold a share. Never gained any money and now stock is worthless and the company in bankruptcy and so can't sell any to pay the AMT. NTA is aware but turned away from the issue because not enough people that it effects. Needs to be looked at further. Have refinanced my house and sold other stock to pay the \$180,000. Have been through Appeals.

Rhodes NTA is aware AMT ISO issue. In TAS are working a particular case with a similar situation. NTA is concerned about AMT and has had it in her Report to Congress. TAS is aware of the situation

Woo Two years ago in the Report to Congress. This committee asked AMT to be placed back in the report. We want to reassert that this should be in the Report to Congress

Glass Introduce the LTAs who were able to attend the meeting.

Scott Cases currently working in Oklahoma, one third are Congressional inquires. Number one issues refund inquires and advance child tax credit cases.

Sonnack In Houston have 30 employees. Began the position in April began. Refund inquires much of inventory. Do take in work from other states. Personally have 14 years of experience in compliance and working with the OIC program.

James Dallas has four groups of employees as have a call site. Work comes in from all over. Majority of cases advance child tax credit and congressional inquires.

Clingan --Austin campus has 65 employees and is a Wage and Investment Campus. Generally have 750 cases a month, with many being EITC issues. Working on a project now in regard to the IRS combo letter. Current procedure is report sent and 30 day letter. If taxpayer does not agree, need to provide information. The statutory notice of deficiency or 90 day letter is sent. Examination sending combo letter which invites taxpayer to agree or pay the tax and go to tax court. IRS needs to taxpayer what it is that they need.



## **Sub-Committee Self-Assessment**

### **E-File Hollingsworth**

Committee has recommendations that need to be completed to be considered by Area 5 members at the October meeting.

User Survey for IRS website, for taxpayers to describe their experience of use of Free-File Alliance filing. (See **Attachment Four** )

Next meeting will be September 24, 2003, and will complete six additional recommendations.

DeMarais Background of the work if that each committee member pretended and used the 17 different services to see how they worked. Looked at all the potential problems. Free doesn't mean free as charges could be incurred for state return, archiving your return, Schedule C or other schedules. Looking to determine what you got for free and what you had to pay for.

Seuntjen Committee hoping to participate in the Free File Alliance. Eight additional recommendations coming to committee to send on separately in the assumption will receive varying priority.

Hollingsworth Mamo had stated would not use a survey, but feel this is crucial to over all service. Need to hear form the taxpayer. Want this on the IRS web site. If you have additions to the survey, email Hollingsworth or Woo.

Woo Look at subcommittee work in general and address support staff, stakeholders, information, research, assessment of influence, effectiveness of subcommittee and recommendations.

### **E-file-**

Hollingsworth--Answers to action items and research items received from Delzer. Feel have been orphaned from the IRS stakeholder and needed for effectiveness. Worked together well and were considerate of each others time.

Seuntjens--Tracking system not developed at the National Office level. Confident have NTA attention that this will be corrected. The Service needs to do its job. Looked at all the committee's performances and various activities. Difficult as not get decision on legislative issues until April/March. Area 5 should look at three or four issues at a time with small subcommittees. Should work more issues in Area 5.

### **AMT**

Wilson- Good staff support. Had difficulty selecting issues as most issues seem to be national issues.

Seuntjens--Most issues will be national, 95% national, not unique for your community. Look at issues that concern you and co-ordinate with the other Areas through the matrix.

Wilson--Need to do more outreach to see what is important to local area. Concerns about the legislative part of the issue. Members working well together. Maybe small committee would work better, using email and have three or four issues to work. Have not heard back from the NTA and so afraid will not have any influence.

Seuntjens--New organization and really do have influence. Have a good start. Recommendations will flow more now with the experience of the panel members. Need to have IRS side work with us.



Smathers Should have let go sooner and changed focus from law to form/instructions. Will have more impact.

Woo E-file forwarded. AMT no response. How do you feel about the product you made? How do feel about what you did?

Wilson--Feel good about work done.

DeMarais Good. Represent an unheard voice. No one represents the public.

Seuntjens--Need feel OK about accomplishments. Build on and make better next year. Position selves for next year. Need to look at matrix, Systemic Advocacy and TAS issues for new issues.

Rhodes Have the Area 5 issue to share. Clearly trends when you look at issues volume wise in each state. Offices have similar work. Most often problems with processing original returns and amended returns. Other most frequent issue deal with levies.

### **Area 5 Self-Assessment/Annual Report/Presentation**

Woo Review the format of the report. Need at look at disappointments during the year.

Seuntjens-No concerns

Wilson Outreach

Smathers--Availability of materials for outreach, education materials, power point show.

Wilson- Lost members that have not been replaced. Vacancies not dealt with timely.

Smathers Difficulty with TAPSpeak. Trouble with the system timing out. Generally a disappointment that tool doesn't work as planned.

DeMarais Article sharing and discussion points. Need that tool for the work to happen. Too much information and needs to be managed.

Woods Frustration on AMT. A huge problem and knows the problem, the solution and no one acts to solve it.

Hollingsworth More public involvement. Enjoy face to face meetings. Accepting public input is critical that public be involved in the process.

Seuntjens- Federal Register will not reach the public with meetings. Need to use organizations to reach more people.

Bader- Heard from the NTA about independence and access. Then reality hit.

DeMarais Taxpayers ask us to be reactive. We want to be proactive. Only time people call TAS is when they get their refund and it happened to them. We are really looking for proactive solutions.

**Overall grading** After much discussion, the grade agreed to was seven.





### **Committee Overall grade**

DeMarais--Started something.

Hollingsworth Got together through teleconferences, but really started to come together in Kansas City. Did need time to develop the process to produce a product.

Warren- Once got issues to work, the committee took off.

Seuntjens--New panel with no process. Needed to build the process to work through the area committees.

Bader- Looking to the future and next subject to move on.

Wilson-- Did well with what we had to work with.

Wood--Surprised at how effective the committee has been.

### **Staff support**

Wood-- Got the information he asked for.

Wilson Excellent.

Bader-- Helped get the information needed.

Smathers-- Received the information asked for and received in a hurry.

Seuntjens--Staff National Office intended has not developed the way we want it. More to be done to date. Give staff a seven. Staff just not there yet.

Warren-- Received prompt response.

Hollingsworth Staff usually got back to him. Excellent support from staff.

DeMarais--Rough start with staff people. Hard because need consistency. If want other committees, need to prioritize with the staff.

Woo Milwaukee staff astounding. Travel arrangements, expense vouchers, and materials we need very timely. As efficient as can be.

Herman Impressed by the professionalism of the staff.

### **IRS Cooperation**

Smathers--Disappointment with local cooperation. No feedback from National Office.

Wilson--The IRS components the weakest link in the whole program.

Hollingsworth--Did have IRS folks made available, but poor communication with IRS. Committee's issue was orphaned.



Smathers--Some disappointment. Committee members should have reached out to IRS people as well. Feedback could have gotten, maybe we didn't ask for.

Herman Improvements for the committees should include more face to face meeting. Would improve communication skills when see each other.

Woo Time commitment a concern? Heard in the Joint Committee meeting. Need to look at the time issue of 300 hour commitment.

Smathers Outreach, committee work, prep time, and research the 300 number too low.

Seuntjens--Expectation of 300 hours the minimum. Some members really not putting in the time, or find out they really do not have the time. The 300 is what you need to get the job done.

Wilson At least 300 hours should be said to the next group coming on board.

Woods--Amount of time not the problem. Weeks all meeting at the same time and so hard to prepare all at one time.

Woo- Committed to the issues and work done to complete them. Was effort worth the time you devoted too it? Quality of what we produced, we know it took more than 300 hours. Will write up the annual report and send it out to the committee for approval Will do the presentation for the annual meeting as prescribed by the JC.

### **Annual Meeting**

Woo Election of Chair--JC decided that committees should look at leadership for next year.

After discussion by the members, Woo reconfirmed as chair. In his absence, Castleberry reconfirmed as Vice Chair. (DeMarais abstained)

Woo--Staggered terms Should begin to think about the option of serving for the third year. Looking for one third of the panel stay on for a third year. Will look at this in early spring.

Woo--Financial Literacy Ad Hoc sent letter to Commissioner Everson, Treasury Secretary John Snow and Federal Reserve Chairman Alan Greenspan. Endorsement of the concept brought to the JC. IRS should work with the Department of Education. At a very high level, policy should be made, to present tax literacy as part of the financial literacy curriculum.

Smathers- Basic knowledge of the tax system and bring this to the school system.

Sitzberger--Understanding of the tax system and citizen's rights and responsibility in regards to taxes

Bader-- Whole curriculum available for the teachers.

Smathers--Website exists by not used by the teachers. Department of Education needs to get the word out. Specific recommendation on how to address the tax piece of the curriculum.

Woo- Also the draft promotional materials for the outreach, developed by the Ad Hoc committee will be available at the annual meeting.

Seuntjens Issue committee focus will bring better understanding. Members can select a new issue committee.



Woo Topics for break-out sessions to be finalized at JC meeting on

Tuesday, September 16, 2003

DeMarais Need process for picking the break-outs ahead of time.

Seuntjens Process to pick the break-outs will be discussed at JC. Better to look at ahead of time.

Hollingsworth Think about three courses at 45 minutes, rather than 2 at 120 minutes.

Herman But do need time for discussion of the topic as well.

### **Closing/Assessment**

Herman made several proposals--

Outreach proposal: Develop a TAP/SpeakUp Introduction Packet. Existing materials: Castleberry's Power Point presentation, Cap letter of introduction. To be developed by TAS: list of contacts including non-for-profit community organizations with full name, title, address, phone number, and email. Process would be to send letter to all. A week later, follow arrival of letter with a phone call introducing her/himself as the TAP state/area representative, offering the possibility to show the Power Point presentation. Set up annual calendar of presentations.

### **ACTION: Herman to put together with input from Castleberry.**

Proposal to expand Tax Forum audience: Cater to everyday taxpayer similar to practitioners. IRS should organize Tax Forum for taxpayers. Allowing attendance gives a wealth of information, taxpayers could educate themselves directly from IRS. Attendees would pay nominal fee just like those attending existing Tax Forum do now.

Proposal to extend TAP participation in existing Tax Forum: Set up TAP booth in the exhibition hall to increase public awareness. Also allow at least 30 minutes lecture/speaking time in existing Tax Forum. This will also increase public responsiveness and TAP accomplishments exposure. Next season recruitment may bring in larger participation.

### **ACTION: Herman and Glass will investigate for next year Tax Forums.**

Congressional Visits Proposal: Receive the agenda in advance.

### **ACTION: Glass will investigate.**

Public Input Proposal: Motion to use TAP issues form when repetitive public input (same person, same issue) occurs.

Seuntjens Question for Glass concerning newspaper and television advertising, IRS Problems? They offer website and phone number. How can we protect taxpayers from this type of advertising?

Glass IRS has an Office of the Director of Practice. Should be enforcing ethical practices.

Seuntjens--How can TAP advocate for taxpayers.



Sitzberger These businesses are hired by the taxpayers to help file bankruptcy, file offers in compromise or set up installment agreements. Some times the message of these businesses is realistic and sometimes it is not.

Smathers They make it sounds like all can get an OIC for pennies on the dollar.

Seuntjens--Citizens think need to take newspaper approach. How many taking this approach and why. Can not be served by this approach. Maybe an issues to understand better.

*Saturday, September 13, 2003, 8:00 a.m. - 12:00 p.m*

### **Welcome/Announcements/Review Agenda**

### **Discussion/Selection of New Issues**

- Walk in offices Services, area covered, communications regarding locations hours

#### **Area 1, 5, 3- parking lot**

- Offer in compromise, #2-2259 **parking lot**
- Availability of transcripts in Taxpayer Assistance Centers Will no longer be available as of 10/1, #2074- **dropped**
- Levies- **parking lot**
- Electronic filing for VITA/AARP-availability/problems electronic filing **Laura/Maria**
- Real estate complexity **parking lot**
- Amended Returns processing- **parking lot**
- Address change procedures- **Laura will report 120 days**
- ID theft impacting IRS- Disclosure of SSN on checks or other documents someone else may have access to other than the IRS- **Bader/Hollingsworth November meeting**
- Audit methodology-process, sampling focus-- **Tom will report in 90 days**
- Accuracy of tax law answers, #3-11 **Smathers will report January meeting**
- Complexity of Depreciation **Smathers will report November meeting**
- Capital Gains-option for direct reporting on line 13 1040 and bypass Schedule D **Jeana/Lillian/Nan- Will report November meeting**
- Preparer PTIN issue from database- **dropped**
- Copies of returns transcripts and returns, communications re: retaining copy **Jeana/Lillian will report November meeting**

**ACTION: Frank will call Janell Seward in regard to letter of September 2, 2003**

### **Public Input**

Concerns were raised forth about how public participation has been managed by the Area 5 committee. Through discussion, the decision was made to assign the Vice Chair the responsibility of managing distractions and disruptions from the public. This will free the Chair to carry on the meeting per the agenda.

Eichner Talking about the TAS case study waters down the issues. Many collection issues on the case record. Members not as experienced as I am. Terrible experience for me. OIC technology a different issue. Need to talk about the fairness of OIC.



Been in business for 20 years and I know what I am talking about. Have many clients, including mom and pop businesses. I have good determination of the issues.

Levy notices lead to OIC, installment agreements. Process is levy happens because people ignore the IRS. OIC fairness the real issues. System takes too long to do 2-4 years, 14 days, 6 months to respond. Need reasonable amount of time for fairness. Making of estimated taxes not fair. Revenue Officers have a hard job. Not taught to be fair. If do not own a car, but need a car, need to buy car in the future, no allowance made. Need to allow taxpayers to pay their employees. If borrow money, it is considered income from different people. PIN number a problem. They can not find it. Unable to look up the numbers.

Yesterday during your meeting. You used income instead of taxable income. I do not want to you to be embarrassed.

Hollingsworth--IRS no time frame to respond. Takes 14 days to respond?

Eichner--6 months to 4 years

Hollingsworth Taxpayers should have information needed if they initiated the case. But problem is many OIC cases have to be responded to. The number of cases as opposed to the number of IRS employees.

Eichner--Always ask for current data. Give 14 business days to respond to that request. Reasonable time shall be allowed. Say can't give you more time.

Hollingsworth Could look at response time stated by the IRS. Is a procedural issue. Maybe make it 15 business days. Maybe can change the procedure.

Seuntjens We are not tax experts. Chosen to be listeners.

Smathers--Know issues are bigger, but know we have to narrow the focus.

### **Calendar Discussion**

Teleconferences will be the second Monday of the month at 3:00 p.m. Central Time.

- November 10, 2003
- December 8, 2003
- January 12, 2004
- February 12-14, 2004 First face-to-face meeting

**ACTION: Delzer to prepare a cost comparison for Kansas City, St. Louis, Oklahoma City and Omaha.**

- March 8, 2004
- April 12, 2004
- May/June Second face-to-face meeting

**ACTION: Panel members to email Delzer about availability for a meeting in May or June**

- July 12, 2004



- August 9, 2004
- September 13, 2004

### **Closing/Assessment**

Meeting Satisfaction Assessment handed out to the group. Woo thanked the group for their participation.

### **Attachment One**

*September 12, 2003*

### **TAP SUB-COMMITTEE E-FILE**

#### **Present:**

- John Hollingsworth
- Tom Seuntjens
- Laura DeMarais

#### **Observers :**

- Public: 2
- IRS: 3

The committee submitted to W & I the following recommendation on June 18, 2003

Recommendation A member of TAP be on the E-File Free File Alliance Partnership

Committee as representative/advocate for Taxpayers.

The following recommendations were discussed and will be finalized in October for submission and will support the original recommendation.

1. John provided an example of the survey the committee would like to see on the IRS or Free file provider web site.

Discussion:

- Keep survey basic with no open ended questions to hard to roll-up data.
- Ask for link to TAP website for comments.

**Action Item** : John Hollingsworth email sample survey to members for input to hear recommendations for area meeting on Oct. 4th.

2. Laura provided information on eliminating RAL's with three recommendations:
  1. Free file Alliance Members eliminates online RAL's.  
**Need to clarify only RAL's on Free Alliance Member E-File sites be eliminated not all RAL's be eliminated.**
  2. Expand volunteer based electronic filing
  3. Promotion of Direct Deposit for electronic filers.



Recommendations 2 & 3 will be submitted as individual recommendations as they each go to different committees for consideration and are separate issues that need to be addressed.

**Action Item: Mary Ann to get issue number for each recommendation, as individual recommendations, as they each go to different committees for consideration Oct. 4th.**

**Action Item: Laura will develop 2 and 3 to submit individually to Area 5 committees on Oct. 4th.**

Tom presented the following recommendations..

3. Allow taxpayers to archive and/or print a copy of their return free of charge.
4. Expand Free-File to state returns by the Free File Alliance At a minimum state all fees up front on IRS Wizard.

**Action Item: Tom Seuntjens - Have recommendations ready for Area 5 meeting, Oct. 4th.**

Total of seven (7) recommendations. (Maria not present to discuss her topic)

Agree to keep them all separate for better tracking and response from IRS.

Use format: Submitted by Tom Subject Background Statement of problem Proposed solution Conclusion

E-mail all recommendations to members for review and comments to finalize for Oct. 4th meeting.

Email by Sept. 23rd and will discuss on 24th at 2:00 central time. Mary Ann will send call in information to members.

**Action Item : Self Assessment John Hollingsworth**

## **Attachment Two**

TO: TAP Joint Committee

FROM: E-file Subcommittee (Area 5)

DATE: September 10, 2003

RE: Eliminate Refund Anticipation Loans (RALs) Solicitation by Alliance Members Discussion and Recommendations

## **Background and Discussion**

Tax preparers, including FreeFile Alliance members, view RALs as tax business profit centers. For over a decade, RALs have been linked with electronic filing of tax returns and allow taxpayers to have their refund in hand within a day or two of completing their taxes. This is what the taxpayer understands.



What the taxpayer doesn't understand is that the uncertainty of the future is completely defined by the RAL contract. First, the taxpayer (now, the borrower) pays a fee for the opportunity to get his or her money in advance. If everything goes right, the short-term loan will be paid back by the tax refund. On the other hand, if the refund is delayed or disallowed, the debt becomes a long-term loan with a prescribed payment plan. Often RAL's can result in borrowers paying interest rates that are effectively in excess of 100%.

FreeFile Alliance members are currently able to market RALs without restraint to the customers who select their tax preparation services. In fact, many of the Alliance members have selected low-income taxpayers for their market share--people who often want quick cash to pay off bills or buy a car. Unfortunately, many of these low-income taxpayers are filing for refunds and credits meant to provide additional support for their families, money which goes instead to pay for tax services. In fact, in 1999 approximately \$1.75 billion of the \$30 billion of the Earned Income Tax Credit (EITC) was funneled off by preparers and lenders.<sup>1</sup>

One reason to support the elimination of RALs among the FreeFile Alliance is because of the lack of face-to-face contact with the tax preparer. Clients are not able to ask questions, gain clarification or other meaningful feedback from the preparer at the time they sign up for the loan. If the client doesn't understand or misreads the on-line contract, he or she will suffer the consequences.

Consider, for example, recent Minnesota legislation related to RALs in face-to-face settings. This legislation will begin to regulate paid preparers who offer refund anticipation loans for the upcoming (Tax Year 2003) filing season. This legislation paves the way for other states as well as federal legislation in this area. Some of the provision include:

1. A NOTICE in a large font for easy reading that discloses that the money is a loan, the annual percentage rate (APR), the amount the charges will reduce the refund, additional charges incurred if the refund is delayed, and the statement You can get your refund in about two weeks if you file your return electronically and have the IRS send your refund to your bank account. You do not need to pay for a loan to get your refund quickly.
2. standards of conduct for paid preparers who prepare more than six returns and are not in an employee/employer relationship,
3. required disclosures in writing, signed and dated by the preparer and client,
4. a bill itemizing charges for return preparation, electronic filing and related to the RAL,
5. penalties, which may include up to \$1000 per violation and termination of the authority to electronically transmit returns, and
6. the opportunity to pursue civil action, including damage awards which may include attorney fees, court costs, as well as actual damages.

Perusing the provisions of the Minnesota legislation, it becomes clear that a face-to-face meeting between the tax preparer or lender representative is necessary for the complex mutual communication required in this transaction. Anything less leaves the taxpayer with unanswered questions.

## **Recommendations**

### **1. Free File Alliance Members Eliminate On-line RALs.**

Because of the complexity involved in the transaction and the inability for full disclosure of the terms on-line, eliminate the blending of RALs and FreeFiling through the IRS link. NTA Nina Olson also voiced her support for the proposal that FreeFile Alliance members should not be allowed to sell RALs to their clients.<sup>2</sup> Regardless of the clarity of IRS disclaimers, taxpayers will link the IRS to these product offers, she said in her fiscal 2004 objectives report to congress.

### **2. Expand Volunteer-based, Electronic Filing**





Volunteer Income Tax Assistance (VITA) and the AARP Tax-Aide Program provide free preparation of tax returns for low-income taxpayers. Expansion of these services, especially in the area of electronic filing, could help alleviate low-income taxpayers' dependence on paid preparers and FreeFile Alliance members.

### **3. Promotion of Direct Deposit for Electronic Filers**

Taxpayers who utilize direct deposit for their tax returns will have their money available within 10 to 14 days. Anyone who utilizes electronic filing services should be aware of this. Efforts should be made, perhaps between the IRS and financial institutions to help unbanked taxpayers open bank accounts.

<sup>1</sup> 1999 Compliance Study

<sup>2</sup> Free File Alliance Should Not Sell RALs, Advocate Tells Congress, Tax Notes Today, July 8, 2003.

### **Attachment Three**

#### **SUGGESTIONS FOR REVISIONS TO THE INSTRUCTIONS FOR FORM 6251**

The Area 5 Subcommittee studying the Alternative Minimum Tax has found the Instructions for Form 6251 to be extremely complex. Since it is estimated that many more ordinary taxpayers may be subject to the AMT in 2003 and 2004, the committee believes that the instructions need to be simplified so that the average tax filer can understand them.

IRS staff member, Bob Erikson of Forms and Publications, has indicated that he would welcome suggestions for revising the Instructions from an external panel such as ours. The Committee decided to limit its review to the General Instructions and to those Specific Instructions which would most likely apply to the ordinary taxpayer caught up in the AMT.

We therefore make the following recommendations:

#### **GENERAL INSTRUCTIONS**

##### **Purpose of Form**

Change to read as follows:

The tax laws give special treatment to certain taxpayers for some types of income, deductions, and credits. These laws enable some taxpayers with substantial economic income to significantly reduce their regular tax liability. The alternative minimum tax (AMT) ensures that these taxpayers pay at least a minimum amount of tax.

If you have the following adjustments to your regular tax, you might be subject to the AMT.

- High miscellaneous itemized deductions
- A large deduction for state income taxes
- Exercised incentive stock options
- A high number of personal exemptions



- High medical expenses

Please use Form 6251 to figure the amount, if any, of your AMT. If this amount is larger than your tax as shown on line 42 of Form 1040, it will be entered on line 43 on Form 1040. The total of your taxes on lines 42 and 43 of Form 1040 will be your total tax liability. Also use Form 6251 to figure any credit limitations.

(The committee proposes that the purpose statement also be included in the 1040 instructions, line 43.)

### **Who Must File**

Replace as follows:

Attach Form 6251 to your return if:

- Line 31 is greater than line 34 of Form 6251, **or**
- You claim any general business credit, the qualified electric vehicle credit, the unconventional source fuel credit, or the credit for prior year minimum tax, **or**
- The total of lines 8 through 27 of Form 6251 is negative, and line 31 would be greater than line 34 if you did not take into account lines 8 through 27.

### **Optional Write-Off for Certain Expenditures**

delete the word ratably in the third line.

Insert Internal Revenue Code [IRC] before section 173.

In all future references to the statute, insert IRC before section.

### **SPECIFIC INSTRUCTIONS**

Rewrite the !Caution! paragraph as follows:

If you claim the standard deduction on Form 1040, you must also use the standard deduction in figuring the AMT. However, by itemizing deductions on Form 1040, you may be able to lower your total tax if you owe AMT.

### **Part 1. Alternative Minimum Taxable Income (AMTI)**

**Line 1** Add **Income** to the title.

### **Line 4 Certain Home Mortgage Interest**

Change to read:

The AMT will allow you to take a deduction for interest used to

1. Buy, build, or substantially improve
  1. your main home, or
  2. your second home that is a qualified dwelling. (A qualified dwelling is any house, apartment, condominium, or mobile home not used on a transient basis.)
2. Refinance a mortgage that meets the above requirements as long as the refinanced amount was not greater than the mortgage immediately before the refinancing.



**Any other home mortgage interest included on lines 10, 11, or 12 of Schedule A of Form 1040 must be included on line 4.** (An example would be money borrowed to buy investment property, or stocks and bonds.)

**Exception.** Do not include interest if the mortgage was taken out before July 1, 1982 and was secured by your main home or a qualified dwelling used by you or a member of your family at the time the mortgage was taken out. See IRC section 56(e)(3).

### **Line 8 - Investment Interest**

Change the above title to **Investment Interest and Interest Expense**

Change the first paragraph to read:

If you filled out Form 4952, Investment Interest Expense Deduction, for your regular tax, you will need to fill out a second Form 4952 for the AMT.

#### **Step 1.**

Change to the following:

In addition to the interest expense required in line 1 of Form 4952, add

- a. Any interest expense from the interest listed on line 4 of this form (6251), and
- b. Any interest on private activity bonds issued after August 7, 1986 that is included in your gross income and used as a deduction. (Private activity bonds are municipal bonds used to finance non-governmental activities, such as ....)

#### **Step 3.**

Change to the following: In Part II you must recalculate the following amounts to include all adjustments and/or preferences. Include any interest and investment expenses from private activity bonds issued after August 7, 1986.

- a. Gross income from property held for investment
- b. Net gain from the sale of property held for investment
- c. Investment expenses

### **Line 13 Exercise of Incentive Stock Options**

In the next to last paragraph, add the following sentence:

If this is your situation, leave line 13 blank. If this is not your situation, continue reading.

### **Line 16 Disposition of Property**

In the paragraph below the **!Caution!** note, place the following two sentences in bold type:

**If you have a capital loss after refiguring Schedule D for AMT, apply the \$3,000 capital loss limitation separately for the AMT. For each of the four items listed above, figure the**



**difference between the amount included in taxable income for the regular tax and the amount included in income for the AMT.**

**Line 19 Loss Limitations**

In the third paragraph, add, **or** at the end of the 6th line.

**Line 20 Circulation Costs**

**Add this sentence at the beginning:**

If you publish newspapers, magazines, or periodicals, and you incurred circulation expenses, you need to complete this line.

**Other Recommendations:**

The committee recommends that the abbreviations in the second column in page 4 be written out completely the first time they are used in the Instructions. Change Pub. 946 to Publication 946 and Rev. Proc. to whatever they refer to.

**Attachment Four**

**E-filing User Survey**

**With 1 indicating the Highest level of Agreement and 5 indicating the Highest level of Disagreement, please respond to the following statements.**

1. This is the first time that I have file my federal income tax using E-File.	1 2 3 4 5
2. The Gateway Wizard on the IRS site that determined my eligibility to use E-File was easy to use.	1 2 3 4 5
3. The instructions on How to e-file on the Free Alliance site that I used were difficult to understand.	1 2 3 4 5
4. I had to have someone help me complete my taxes using E-file.	1 2 3 4 5
5. I was able to e-file my taxes in one session at the Free Alliance member's website.	1 2 3 4 5
6. I found using the Gateway Wizard to determine my eligibility to e-file to be confusing.	1 2 3 4 5
7. I had my refund deposited electronically.	1 2 3 4 5
8. I found e-filing to be harder than doing my taxes by hand.	1 2 3 4 5
9. I had to pay for some additional forms necessary to file my taxes electronically.	1 2 3 4 5
10. I have very little concerns about the security and privacy of my electronically transmitted information.	1 2 3 4 5
11. I made use of the Refund Anticipation Loan offered by the Free Alliance member's website.	1 2 3 4 5
12. I found the offers of paid for services by the Free Alliance member's website to be annoying.	1 2 3 4 5
13. I found the offer of free e-filing by the Free Alliance member's website to be misleading because I had to pay for some forms or services that I wanted or needed.	1 2 3 4 5
14. OVERALL, I found e-filing to be easy to understand and use.	1 2 3 4 5
15. I intend to use E-File again next year.	1 2 3 4 5



**Area 5 Committee Meeting Minutes  
August 18, 2003**

**Present:**

- Patrick Castleberry
- Laura DeMarais
- Maria Hermann-Pariente
- Tom Seuntjens
- Paul Smathers
- Jeana Warren
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

**Staff:**

- Mary Ann Delzer, Program Analyst

**Absent:**

- Linda Bader
- Denise Bigger
- John Hollingsworth
- Ken Logan

**Guests:**

- Ken Eichner
- Steve Bankler

**Welcome/Announcements/Review Agenda/Roll Call**

Quorum met.

The TAP Annual meeting will be October 2-4, 2003 in Washington, D.C.

**ACTION: Panel members to send training ideas for the meeting to Delzer.**

Area 5 will be required to make a 10 minute presentation assessing the first year. Area 5 will also be required to make a written year end assessment for the TAP Annual Report. Both assignments will be discussed at the September meeting in Dallas.

Also need to discuss the election/confirmation of the Area 5 chair in September and the TAP chair at Annual meeting. Members should spend some time considering these decisions ahead of time.

**ACTION: Agenda items for the September meeting in Dallas should be forwarded to Delzer.**



### **Review/Approve Minutes**

Seuntjens moved to approve July minutes. Castleberry seconded. Minutes approved by consensus.

### **Subcommittee Reports**

- **AMT Wilson**

The subcommittee has met twice since that last Area 5 meeting. On July 16, 2003, the members met to discuss whether to take on a new issue. Some suggestion was made to look at the service provided at the Taxpayer Assistance Centers (TAC). After some preliminary research, the members decided not to pursue this issue as IRS is engaged in its own review. Area 3 is also considering TAC issues.

The committee decided to look at the Form 6251 to see if any simplification changes could be recommended. During the second meeting, July 31, Castleberry reported on his conversation with Mr. Bob Erickson of Forms and Publications. Due to a form revamp in 2002, Erickson suggested the committee look at the instructions clarification and simplification.

Castleberry related that Erickson is truly interested in the TAP perspective on the instructions as he recognizes that IRS staff are too close to the language and need outside input.

**ACTION: AMT committee to meet Thursday, August 28, 2003 at 2 CT.**

- **E-Filing Seuntjens**

No meeting of the subcommittee has been held since the last Area 5 meeting. No update has been received on the elevated issues concerning IRS Free-file.

**ACTION: Woo to call Hollingsworth about setting up the next subcommittee meeting.**

**ACTION: Woo to update committee members on any cross-over issues received from other Area/Issue committees.**

### **New Issues**

Woo shared the new policy on charging a fee of \$150.00 for the submission of Offer and Compromises. Committee may want to monitor how this change impacts customer service.

Delzer shared three issues from the database:

1. TP offers a suggestion for parents who pay child support. She explains that the child support payments are still counted as part of parents income. She wants the parent paying the support to receive a tax break.
2. Caller works for a CPA firm and lately been getting a rash of letters from IRS (Austin SC) requesting verification of tax return information, sometimes for information for deduction never even taken. For example, asked for Form 2106 when TP didnt take miscellaneous deduction because not greater than 2% of AGI. Other tax professionals in area say same thing, that clients getting lots of unnecessary mail.
3. The past week callers office received three letters from Andover SC requesting missing/unsigned Forms 8453. 100% of the signature issues involved a deceased taxpayer with the form being signed by the surviving spouse. In all of these cases caller copied Form 8453 and attached a copy of the 1040 which indicated the taxpayer was in fact deceased. This gives the impression that somebody noticed a signature missing, but did no further research of the return.



### **Outreach Report**

Castleberry Speech given to a CPA group last month. Expressed his discouragement to have spoken to 100s of practitioners in the last year and has gotten only one comment back.

DeMarais Attended two meetings of the Working Family Coalition. Also met with the AARP/TAX Aide organization to discuss ways to improve the program.

Maria Hermann-Pariente Spoke to local Newcomers Association and Condo Association.

Smathers Will attend the next SRMLC meeting in ND

Wilson Met with the AARP state coordinators for KS

Woo Wrote an article on TAP for the tax professional newsletters in TX

Delzer reported that Linda Bader attended the St. Louis Tax Form, August 19-21, 2003, on behalf of Area 5. Maria Hermann-Pariente and Jeana Warren will attend the Tax Forum in San Antonio September 2-4, 2003.

### **Action Items/Office Report**

Delzer reported that all action items from last months meeting had been completed.

Woo stated that Denise Bigger is interested in continuing to be involved in Area 5. Woo also stated that she has not been able to contact Ken Logan about his status.

### **Public Comment**

Ken Eichner Expressed his concern that too much of the agenda time is spent on discussing outreach. Panel should consider emailing this information to each other as an alternative.

Steve Bankler Commented that he has received inquiries about Form 8453 signatures from the Andover SC. One TP was deceased. Also expressed concern about the fee of \$150.00 for the OIC program. IRS asking those who can least afford to pay a fee. Did not feel this fee would reduce the frivolous filing. Stated that the Iowa vacancy should be filed. Also feels TAP needs to better define message that interest is in systemic problems, not personal ones. Need refine message found in press release.

### **Closing/Assessment**

**The next meeting is September 12-13, 2003 at the Renaissance Dallas North Hotel  
4099 Valley View Lane  
Dallas, TX**

**Meeting Adjourned.**



## **Area 5 Committee Meeting Minutes July 14, 2003**

### **Present:**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Tom Seuntjens
- Paul Smathers
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

### **Staff:**

- Mary Ann Delzer, Program Analyst
- Sandy McQuin, Program Manager
- Patti Robb, Note Taker

### **Absent:**

- Ken Logan
- Jeana Warren

### **Visitors:**

- Ken Eichner
- John Lindell, Port Arthur, TX
- Arthur Greenspan, Beaumont, TX
- Carl Cassen, TX
- Debbie Postell, Dallas, TX
- Cliff Maxwell, Ft. Worth, TX
- Martin Stoeger, TX
- Nicole Borczak, TX
- Richard Kaga, Waco, TX
- Steve Bankler

### **Welcome/Announcements/Review Agenda**

Woo welcomed the visitors to the call.

### **Roll Call**

Quorum Met.

### **Review/Approve Minutes**

Bader moved to approve June minutes. Smathers seconded. Minutes approved by consensus.





## Subcommittee Reports

- AMT - Wilson

Report submitted by the sub-committee was approved by Area 5. The report was sent to Nina Olson, NTA. Have not received a response to date. Good news that Olson will include AMT in the upcoming NTA Annual Report to Congress for 2004. All TAP members have received the report and Area 5 hopes they will each contact their Congressmen about the problems of AMT.

Smathers - The Brookings Institute released another article about AMT. on July 7, 2203, entitled,"The AMT: Projections and Problems."

Woo-Additions have been made to Mrs. Lincoln's energy bill, including the new child tax credit. Last week Hutchinson incorporated the consideration of sales tax. The bill has not moved since.

- E-Filing - Hollingsworth

The sub-committee met once since the last Area 5 meeting. Sarah Wilson, legislative assistant for H&R Block, joined the call. The members were interested to hear her perspective on the e-file season. Discussed what kinds of problems were encountered. Most complaints not concerned with the complexity of e-file or the mechanics of it. For one thing some members did not notice the "Wizard" which could be used to select a Free File Alliance member. Olson's Congressional testimony of 7/8 concerned taxpayer consent to the use of confidential information for after sale use, such as for marketing other financial products and RALs.

Woo - Are you going to address any sub issues?

Hollingsworth -Not yet discussed. Need to look at what Nina noted. What can we do in terms of supporting the NTA? Are there privacy issues with the after filing marketing? Can Free File Alliance be tied into state filings? Thirty two states have direct filing or with the use of a provider.

Seuntjens - Received an email from Sue Sottile regarding the elevated FreeFile Alliance Partnership, TAP-03-003, elevated issue. Sottile indicated that she forwarded the issue to Mr. Terry Lutes. Sottile also inquired whether FreeFile is a large enough issue to create a new TAP Issue Committee. Asked Temple to look at the Issues Committees in October and re-prioritize and let people volunteer for a new committee at the Annual Meeting in October. Also asked Temple to develop a tracking system in National Office. There should be a continued dialogue on the sub-issues and should be documented at the next meeting. If RAL issue is picked up, there will need to be coordination with Area 3 as they are working this issue.

Woo - Committees are requested to recommend two issues by the September Joint Committee meeting so we need to prioritize.

Seuntjens - There are many issues on the table. Try to put some closure to these so we can forward with them by September. Some Areas may have as many as four issues to elevate. Some may only have one. We already have one issue elevated (Free File).

Area 5 should consider another small issue to work in the next 60 days to send to the Joint Committee in September.



**ACTION: Seuntjens will forward Sottile's email to Delzer for the files.**

**Selection of New Issue**

Delzer sent out the list of issued discussed and prioritized at the February meeting. (See below)

Issue	1st Vote	2nd Vote
Walk-In	XXXX X	XXXXXX
Toll-Free	XXXX	XXXXXXX
AMT	XXXXX	XXXXXXXXXX
IRS Communication with Taxpayer	XX	
Real Estate Complexity **	XXXX	XXXXXX
Individual E-Filing	XXXXX	XXXXXXXXXX
NTA Processing Delays *	X	
OIC Delay *	XX	
Innocent/Injured Spouse *	X	

Bader - Asked Seuntjens to explain the "Real Estate Complexity" issue.

Seuntjens - Would like to keep this issue inactive until 2004. Filing could be simplified as there are too many forms. It is too complex to start working right now as we do not have the time to devote to it. Would only be addressing the administrative side - not trying to change the laws.

Woo - How about "Walk-In" or "Toll-Free?"

Bader - Walk-In would be a good one. Maybe we can use the statistics from this past filing season.

Wilson - OIC is causing problems. Could we look at that issue?

Delzer - Areas 6 and 7 are looking at components of OIC. We should check with them before we start working anything related to OIC.

Bader - Identity theft is interesting to me.

Glass - We (IRS) usually deal with the aftermath when dealing with identity theft.

Seuntjens - Walk-in offices would be a good issue. Look at the locations and whether the services are adequate for taxpayers. The toll-free has been partially addressed.

Woo - I remember Seuntjens saying that some Walk-in locations were changed in Minnesota.

Glass - Am not aware of any changes in Texas.

Bader - The members of the AMT sub committee could research Walk-in offices in their own areas and look at service needs and then get together to decide if they want to work.

Wilson - Can we get an updated list of Walk-in sites?



**ACTION: Delzer will get new listing and distribute.**

Seuntjens - If we are going to be effective in the next 60 days, we really need to address.

McQuin - There are some changes in the services Walk-in office will provide.

**ACTION: Delzer/McQuin will get information.**

Seuntjens - We should jump into this issue. It did get five votes.

Bader - Can we measure customer satisfaction with Walk-in?

McQuin - Yes, IRS still hands out a satisfaction survey to people who go to Walk-in.

**ACTION: Delzer/McQuin will get information.**

DeMarais - Concerned that the rural areas are being cut back. Is there a comprehensive plan for forms and services?

McQuin - Plan for service should be rolled out soon. Have heard there will be changes with the forms provided. The plan may not be readily available right now. It's a little early. It is usually rolled out in September. As far as services offered, the income level currently mirrors the VITA sites. And LITC generally does not do tax preparation.

**ACTION: Delzer/McQuin will get the Walk-In program letter.**

Glass - Some LITC sites are set up in conjunction with a VITA site to have returns done.

**ACTION: Delzer to research if demographic information available on taxpayers who use walk-in. Question is are they the same taxpayers assisted by VITA?**

**Outreach Report**

Seuntjens made a motion to skip the outreach report since there are so many visitors and time was running short. Smathers seconded. There was some dissention so a vote was taken. The outreach report is tabled until the next meeting.

**Second Face-to-Face Meeting**

The meeting is scheduled for September 11-13, 2003, in Dallas, TX. Travel to Dallas on Thursday, September 11, meet all day on Friday, September 12 and until noon on Saturday, September 13. Everyone can return home Saturday afternoon.

**ACTION: Please forward agenda items for this meeting to McQuin.**

**Office Report**

McQuin informed the committee the year-end cutoff date for filing manual vouchers is September 12. This means there will probably be an additional two to three week delay in the processing of travel vouchers for this meeting. If this will cause a hardship for anyone, please contact Patti Robb. We can do a request for funding to pay for your hotel room. We need to know at least three weeks before the meeting to get approval.

**Action Items**

Delzer - Completed all action items from last month's meeting.



## Public Comment

John Lindell, Port Arthur, TX, CPA

Arthur Greenspan, Beaumont, TX, CPA

Debbie Postell, Dallas, TX,  
Tried to get information on an amended return. Very frustrating!

Glass--There is a problem nation-wide with claims and IRS is aware of the problem.

Cliff Maxwell, Ft. Worth, TX, CPA

Jeff Gregg, Seymour, TX  
Farm and ranch returns due March 1 and if e-file and they reject, there is no five day period to re-submit to make the return meet the filing deadline.  
Has a problem with an OIC case that has been going on for about a year now.  
Client had a child who was disallowed because of an incorrect SSN. Took a very long time get the EITC reinstated.

Richard Kaga, Waco, TX  
Suggests that the committee let the general public know about their meetings.  
Feels the new proposed deadline for e-filed returns (April 30) will cause significant administrative problems. Also feels it discriminates against some taxpayers.

Seuntjens - This is a legislative issue. TAP is not authorized to address legislative issues. We can, as individuals, write to the National Taxpayer Advocate about the legislative issues, but we cannot address as a committee.

Ken Eichner  
You didn't vote on which new issue you were going to work. I think you should decide.  
Look at effectiveness of Taxpayer Advocate Service  
Timeframes of OICs  
OIC calculations

Woo -The sub-committee decided to look at the Walk-in offices in their own areas and they will bring that information back to the area committee.

Wilson - AMT sub-committee will meet on Thursday, July 17, at 3 p.m. CDT.

## Closing/Assessment

Woo thanked the panel members and visitors and emphasized that all meetings are published in the Federal Register. Other issue to be discussed is Iowa member, Denise Bigger, who recently moved to North Carolina. She would very much like to stay a member of TAP. She would like to stay on the Area 5 Committee since there is no opening in NC. Are there any objections?

All committee members unanimously approved.



Seuntjens - We should keep her until we hear more from National Office about filling vacancies. Please keep her informed that this may change.

Woo - Will tell her that she will continue with the Area 5 Committee. We also have a panel member, Ken Logan, who was experiencing difficulties. He has offered to resign. His offer is with National Office right now. I will contact him to see if his situation has changed and to see if he might like to continue on the committee.

The next conference call is Monday, August 18, 2003 at 3:00 p.m. CDT.

Meeting Adjourned.



**Area 5 Committee Meeting Minutes  
June 9, 2003**

**Present:**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Tom Seuntjens
- Paul Smathers
- R. Jeana Warren
- Nan Wilson
- Lillian Woo, Chair
- Dianne Glass, DFO

**Absent:**

- Ken Logan
- Frank Woods, Jr.

**Guests:**

- Ken Eichner

**Staff:**

- Mary Ann Delzer, Program Analyst
- Sandy McQuin, Program Manager
- Patti Robb, Note Taker

**Welcome/Announcements/Review Agenda**

**Roll Call**

Quorum Met.

**Review/Approve Minutes**

Smathers moved to approve May minutes. Seuntjens seconded. Consensus.

**Subcommittee Reports**

- AMT - Wilson

Sub-committee has been very busy. Came up with a couple conclusions. Don't want to repeal AMT. Would like to see:

1. Index the exemption amounts and phase-out amounts of the Amt for at least 10 years



2. Allow Schedule A deductions, the standard deductions and personal exemptions to be included when calculating income subject to the AMT.

After it is approved by the Area 5 committee, it will be sent to NTA with a cc to Temple. We will ask Olson to:

1. include in her 2003 Report to Congress
2. ask how TAP can help advocate changes to AMT.

Hermann-Pariente - Is there a way to add stronger specific data regarding advantages vs. disadvantages or to find out which legislators were against AMT?

Wilson - We wanted to keep the report to one page - that's why it is so short.

Smathers - This has had a lot of press. We just want to let the NTA know we are concerned about the problem.

Bader - Need to keep it one sheet, otherwise less likely to read.

Seuntjens - One page is sufficient. Everyone is aware of the issues. NTA said even though AMT is not in the current report to Congress, it is still important to her and she still lobbies Congress about it. We can ask her to include it in her '03 report and encourage her to keep pushing Congress.

Hollingsworth - Moved to approve report. Hermann-Pariente seconded. All voted to approve except Diane Glass. Asked to abstain.

**ACTION: Wilson will send report with a cover letter to NTA, cc to Joint Committee. Wilson will sign as author, Woo as Area 5 Chair. JC copy should be distributed to chairs to distribute to all of Panel. Delzer will add to TAP Speak with invitation for members to send copy to their Congressman.**

- E-Filing - Hollingsworth

Acknowledged Delzer's help and sub-committees hard work. Will meet again this week. Need a replacement for Bigger. Anyone interested? We are still working hard to establish a footing. Discussed the first year of free alliance. Has there been an increase? Will IRS meet 80% mandate as set by Congress? Does not look like it. How can we help them achieve their goal? What is our focus? Area 5 will take the lead with this issue. Will we be able to get more information from Tom on process.

Seuntjens - We need an owner for this issue. No issues coming from the Areas have owners.

**ACTION: Delzer will follow-up with Toy and National Office. Should get this out this week.**

Woo - There is frustration since we don't have a program owner. This area committee has done a wonderful job. Let me state again that we are crippled since we are short three members for Area 5.

Hollingsworth - How many people have had to pay to "free" file? We need input from Paul Mamo.

Seuntjens - Let's put our efforts into the issues we really care about. This is a long process.

## **New Issues**



- Free file complaint--analyst believes caller used irs.com instead of irs.gov and so was charged a fee.
- One withholding rate-caller requested one withholding rate to make things easier for small business
- Refund off-set to state - this is up to individual states to negotiate agreement with IRS. IRS currently does this with some states.
- Spouse Retaliation - (injured spouse) When the box is checked, no matter where the case is worked, all letters go out on service center letterhead so a spouse does not know where the complaint came from.
- SSN Hotline - (identify theft) there is not enough interaction between the IRS and SSA. Federal Trade Commission has ownership of this issue. SSA does take complaints on this issue and will notate on record.

Woo - Do we want to look at any of the above new issues?

Hermann-Pariente - Where do these issues come from?

Delzer - When a call comes in on the toll-free number, comments made on the website or correspondence received, suggestions get entered on our database. These are the contacts we received this past month.

DeMarais - Do the callers get a letter in response to their call?

Delzer - If the issue comes in as correspondence, we will respond with a letter. If they call, we thank them on the call. Web comments are acknowledged via email if the customer provides their email address.

Bader - I worked with the FTC on identity theft. Go to web site FTC.gov to get more information. They also have a hotline.

Woo - If we get more identity theft calls, we may want to look at this issue.

### **Outreaches**

Bader - Went to an enrolled agents meeting.

DeMarais - Attended a SMRLC meeting. Minnesota passed legislation on disclosure of RALs. If anyone wants a copy of this information, please contact her.

Warren - Attended a Dallas Congressional liaison meeting. Made a TAP presentation.

Woo - Attended a Congressional forum in San Antonio.

### **Action Items**

Delzer - Completed all action items from last month's meeting.

Preparers please complete the EITC questionnaire and respond to Handelman.

### **Public Comment**

Ken Eichner - Thinks OIC is getting worse not better.  
What about the Matt Roberts issue?

Castleberry - Does not feel this is a systemic problem.





**Closing/Assessment**

Woo - Good meeting. We meet again on July 14 at 3pm Central Daylight Time.  
Meeting adjourned.



## **Area 5 Committee Meeting Minutes May 12, 2003**

### **Present:**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- Tom Seuntjens
- Jeana Warren
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

### **Guests:**

- Steve Bankler
- Ken Eichner

### **Not Present:**

- Denise Bigger
- Maria Hermann-Pariente
- John Hollingsworth
- Kenneth Logan
- Paul Smathers

### **Staff:**

- Mary Ann Delzer, Program Analyst
- Sandy McQuin, Program Manager

### **Welcome/Roll Call/Approval of Minutes**

Lillian welcomed the members to the meeting and reviewed the agenda. The minutes of the previous meeting were approved as written.

### **Report on Joint Committee Meeting**

Lillian gave a summary of the Joint Committee (JC) meeting held May 2-3, 2003 in Washington, DC. The first day of the meeting, the JC heard from NTA Nina Olson, who outlined her activities and took member questions. Systemic Advocacy reported on their program as to what issues they cover and how they identify problems. The members were introduced to TAP SPEAK, a web-based communication tool for the members. Representatives of some of the Operating Divisions gave reports on IRS attempts to reduce taxpayer burden.

Day two brought the discussion of committee reports. Three elevated issues were brought up to the JC from the committees.



1. E-Storage: The concern is the need for preparers to keep records of taxpayers for three years. Since the concern was raised the IRS has released a temporary regulation on April 24, 2003 to give this guidance. Elevated for TAP to give comments on the temporary regulation.
2. Social Security Worksheet: Concern that the SSA worksheet is difficult to understand and it differs from the 1040/1040A instructions. It was recommended that the worksheet located on irs.gov is clearer/easier to understand. Recommendation is to use this version of the worksheet in the instruction next year. Elevated.
3. Area 5 issue concerning the Free-File Alliance: The report had several concerns/recommendations surrounding how the Free-File program went during this first year. The report received great praise from the JC on how well done/comprehensive the report was. The JC will forward the request of TAP to be involved with the evaluation/next year planning of the Free-File program. The JC requested that the Area 5 sub-committee be open to work with/be the depository for, all the committees who have gathered Free-File concerns.

Tom stated he felt good actions items had come forward and that many committees will have issues to forward to JC in the next few months.

### **Sub-Committee Reports**

AMT-Lillian thanked Pat for AMT summary he put together for the committee. She discussed Nina's letter concerning the working of legislative issues. Lillian looked over the TAP charter and at the charge of the NTA. The information indicated that the TAP is meant to make suggestions/is advisory. TAP is not charged with forwarding specific legislative proposals. Nina stated that TAP can forward to her for review legislative issues and she will make her decision as to whether to forward. The AMT issue of Area 5 was presented and the JC sent the issue back to the committee. Lillian told the JC that Area 5 has a commitment to this issue and will continue to monitor Congressional activity. Members can individually lobby Congressmen and Senators and say they are TAP members, but can not say that their position is endorsed by the TAP.

Linda reported that she continues to monitor the various bills with AMT proposals. The bill with the most push is S665, "Tax Empowerment and Relief for Farmers and Fisherman." The bill has 36 co-sponsors. Many of the other bills duplicate efforts/have no co-sponsors. President's bill H2/S2 will increase the AMT exemptions.

Nan asked for a clarification what the JC will accept. Tom said Area 2 and 3 also have legislative issues they are concerned about also. TAP can have more effective use of time to look at IRS policy, procedures and practices. Committees can spend time on legislative issues, but better to concentrate on where can be more effective. If legislative issues are worked, Nina does want to see them for consideration in her Report to Congress. AMT is a concern for Nina. JC will send not send legislative issues to Treasury. Lillian stated TAP advises Treasury and the TAP annual report, distinct from Nina's report, goes to Treasury also. Tom stated each Chair will write a portion of the TAP Annual Report and that will go to Nina, the Commissioner, and Treasury. Report can contain comments on legislative issues.

Nan stated that this helped to clarify the issues and that the sub-committee should meet once more and decide on how to send issue to Nina. Lillian stated the sub-committee needs to construct letter that Area 5 can forward.

### **ACTION: Lillian to contact Paul to setup the next AMT meeting.**

E-File---Laura reported that she and Maria have begun working on the Volunteer E-File issue and will report soon. In regard to E-File, Laura stated John would be cleaning up the document after receiving feedback from the JC. Laura stated her concerns about Area 5 taking on all individual e-file, other than that prepared by practitioners.



Tom stated that this will be a large job. The E-File issues committee had Small Business focus with priority items from the owner. Also have the side of W&I and the ongoing issues of how the Alliance is working. Area 5 will need to lead it.

Lillian stated many committees have interest in e-file as there is a cross-over to other issues. Lillian thanks the sub-committee for writing an article that in the South Texas E-news and the report that when to the SRLMC in Texas.

**ACTION: Lillian to contact John to setup the next E-File meeting.**

### **New Issues**

AMT on disability lump-sum payment:

TP "won" a \$160,000 lawsuit (somehow it was a disability lump-sum payment) and the lawyer fees were half, \$80,000. She could take the legal fees off as a miscellaneous deduction on Schedule A, except on the AMT, miscellaneous deductions are a preference item and not allowed. The AMT was \$50,000. Her state tax was \$4,000. So out of \$160,000, she got \$26,000 - and she is permanent disabled with no way to support herself.

Pat stated he had talked with this taxpayer, as well as a representative of another concerning an OIC issues. (See the attached memo)

**ACTION: Delzer to put OIC issue on the database for future reference.**

### **Outreach Report**

Frank: Attended an event sponsored by the Federal Prison Retirees and he discussed TAP and Area 5 concerns about AMT and encouraged all in attendance to e-file.

Lillian: Joint Committee meeting and Houston SRMLC

Nan: EITC Issue committee meeting in Atlanta

Jeana: Nothing to report

Tom: SRMLC with Laura and practitioner liaison meeting in St. Paul

Laura: SRMLC with Tom and volunteer recognition event for her state. Looking at training materials from "Accountability MN", SPEC, AARP, TCE for good materials for non-licensed preparers.

Pat: Prepared "AMT Primer" for Area 5 also attended Rotarian Luncheon. Hope to receive input from four CPAs in attendance.

Linda: Working on Multilingual Issues committee. Problem with trust of IRS so looking at using public schools and classes/teachers English as a Second Language (ESL). Looking into funding through LITC grant program.

### **Action Items/Office Report**

Sandy discussed the upcoming six Tax Forums. Unfortunately not all TAP members will be able to attend, but are looking for two members to staff booth at each forum. Linda will attend St. Louis forum with Larry Lexow from Area 4. Looking for members from Texas to volunteer for the San Antonio event. Would need to travel on the holiday September 1 and staff the booth September 2 and



3. Need to consider the travel costs, so will look for a Texas members first and then open the opportunity up to all members in Area 5. Jeana, Nan and Laura interested in attending.

**ACTION: Delzer to send email to all members soliciting interest in staffing the booth in San Antonio, September 1-3, 2003. Staff to make decision on attendance based on travel cost estimates.**

Sandy led the discussion concerning options for the next face-to-face meeting. Proposal is Dallas during the second week of September.

**ACTION: Delzer to send out poll via email on availability of members for the second week of September and preference for weekday or weekend meeting.**

Sandy advised the members that all TAP staff and Local Taxpayer Advocates will be attending continuing education during the first two weeks of August. Requested Area 5 reschedule the conference call in August to a day later in the month.

**ACTION: Delzer to update TAP calendar to indicate conference call will be August 18, 2003 at 3:00 CDT.**

#### **Public Comment**

##### **Ken Eichner:**

Mr. Eichner stated it is good for Tom to keep on Nina as AMT continues to be a concern. September is a busy time for CPAs to go to a meeting. Concerning the OIC problem mentioned, the taxpayer should look at deducting a loss for the year paid and requesting interest abatement. Mr. Eichner suggested the next meeting be in Houston. Mr. Eichner also stated IRS is no longer accepting faxed POAs and this is creating a problem for practitioners.

##### **Steve Bankler:**

Mr. Bankler raised a concern over the policy regarding members missing meetings. On the OIC issue, the focus fact that there is a systemic problem in IRS not granting equitably relief OICs. IRS too narrow a standard to work for taxpayers. Can see in the court cases involving Innocent Spouse and Injured Spouse. Need look at the systemic problems with the equitable relief provisions. Mr. Bankler shared his opinion that the committee is not fully meeting their duties by not giving individual contact information out to the public. He again expressed his concern about the way public comment is handled during the meeting.

**ACTION: Delzer to send Pat's memo to Mr. Eichner and Mr. Bankler.**

**ACTION: Delzer to put on next agenda a discussion about individual contact information.**

#### MEMORANDUM

TO: MARY DELZER, TAP ANALYST  
FROM: PATRICK CASTLEBERRY, TAP MEMBER, Area 5 Committee  
DATE: 5-12-2003  
RE: BRIEF ON CONTACT WITH MATT ROBERTS, CPA

Facts: Mr. Roberts represented a law firm which suffered a business loss arising from embezzlement by a trusted bookkeeper. The embezzlement led to a federal payroll tax delinquency of



\$20,000. During the pertinent tax period, the embezzler presented the law firm owners with fraudulent checks, financial reports and payroll tax returns to conceal the theft. The statute of limitations on amending the pertinent payroll tax returns expired prior to the law firm's learning of the tax problem. The law firm did not otherwise have a history of tax problems. Consequently, the law firm requested offer in compromise relief based on treasury regulations under 26 USC 7122, specifically, T.R. 301.7122-1T(b)(4)(D) Example 4, which reads:

Example 4. Taxpayer is a business that despite the adoption of a wide array of precautions, including the employment of outside auditors, suffered an embezzlement loss. Although the taxpayer reviewed and signed employment tax returns and signed checks for payment of all employment tax liabilities, the embezzling employee successfully intercepted these checks and diverted the funds. At the time taxpayer discovers the diversions, taxpayer promptly contacts the IRS and begins proceedings to obtain recovery from the employee and the auditor. Taxpayer is unsuccessful in obtaining any recovery from either the employee or the auditor. While taxpayer has accounts receivable that will satisfy the tax delinquencies, taxpayer would be unable to remain in business if those receivables were seized by the IRS. Further, while taxpayer will continue to generate some profit if permitted to remain in business, those profits would not be sufficient to pay the accrued liabilities prior to the time collection of the liabilities became barred by the statute of limitations. Taxpayer's overall compliance history does not weigh against compromise.

Matt Roberts' Comments: "The IRS denied relief, arguing that the law firm did not display sufficient oversight of the embezzling manager to meet the Example 4 criteria, and that the law firm could have and should have made more of an effort to ensure that the managers were paying the tax. I contend we satisfied all of the criteria for relief as set forth in the Internal Revenue Code, Regulations and Manual. My personal opinion is that if my client's situation does not meet their standard for an Effective Tax Administration Offer in Compromise then nothing short of facts and circumstances that exactly mirror their guidelines will. This has left me very frustrated because I believe the intent of the law is to have the Service seek ways to reach a compromise but in practice they are doing everything possible not to compromise."

"For the record, the settlement officer stated that when challenged I admitted they could have reconciled the checking account or asked to see canceled checks and quickly determined the taxes were not being paid. I do not recall admitting to this, however, in hindsight I would admit that we could have done those things. He went on to say that we could have checked with the IRS and had all IRS correspondence sent to the owners. I agree that we could have contacted the IRS; however, the manger changed the LLC's correspondence address to the physical location of the business unbeknownst to the owners. As far as reconciling the books, bank statements etc., the settlement officer fails to appreciate the level of trust placed with the managers and the close personal relationship the managers shared with the owners. The manager provided copies of checks issued to pay the tax and the owners had no reason to doubt their validity. Furthermore, the manager



used a sophisticated bookkeeping program that only she understood. Once again, the owners trusted this woman like a member of their family...they had no reason to question her integrity."

The following is taken verbatim from the IRS rejection letter the law firm received:

"The ETA (Effective Tax Administration) portion of the offer was presented in your request for appeal. We explained in your conference that ETA hardship provisions were not available for a business under the new regulation. You and the business owners felt that it would be unfair and inequitable to require the company to pay the same tax the company managers pocketed and also give them credit for the tax on their W2s. You stated in the appeal that it could be argued that all of the taxes attributable to employees other than the managers had been paid and you felt it would be detrimental to voluntary tax compliance to hold the company liable for taxes that directly benefited those who intentionally chose not to pay the tax in the first place."

"In essence you and the owners feel the non-payment of tax was not their fault and the IRS should be collecting from the manager. They feel they took necessary steps to ensure the tax was being paid but the manager deceived them into believing the tax was paid. When challenged you admitted they could have reconciled the checking account or asked to see canceled checks and quickly determined the taxes were not being paid. They could have also taken other steps such as checking with the IRS for outstanding balances and having all IRS correspondence directed to them but they did not."

"It appears the main problem was that they were absentee owners who installed a manager to operate the business in their absence. They were too busy to oversee the day-to-day operation of the business. As a result the company manager took the opportunity to falsify the books, mismanage the corporate funds and embezzle a portion of those funds."

"The offer regulations state this type of offer is appropriate only in those rare cases where collection would adversely affect the overall tax system. They also state the circumstances must be such that compromise is justified even though a similarly situated taxpayer may have paid his liability in full. The IRS must conclude that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner and presume that the correct application of tax laws produces a fair and equitable result."

"The Internal Revenue Manual section 5.8.11.2.2(3) also states that the Service will not compromise on the grounds that collection would be detrimental to voluntary compliance based solely on the argument that the liability was caused by the acts of a party beyond the control of the Service, including the taxpayer, the taxpayer's partner, or the taxpayers representative or agent."

"Our conclusion is that this is not a situation where the collection of the tax would undermine the public confidence and to compromise the tax would not be justified when considering other taxpayers in similar situations that have been required to pay the tax."

"The argument presented by you and the owner falls short of the situations described in the regulations, the manual and the IRC and thus the offer rejection must be sustained."



## **Area 5 Committee Meeting Minutes**

*April 14, 2003*

### **Present:**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- Maria Hermann-Pariente
- John Hollingsworth
- Tom Seuntjens
- Paul Smathers
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Sandy McQuin, DFO

### **Absent:**

- Denise Bigger
- Ken Logan

### **Guests:**

- Steve Bankler
- Ken Eichner

### **Staff:**

- Mary Ann Delzer, Program Analyst
- Patti Robb, Note Taker

## **Welcome/Announcements/Review Agenda**

### **Roll Call**

### **Review/Approve Minutes**

Minutes were approved.

### **Subcommittee Reports**

- AMT - This is a legislative issue. Think we should concentrate on the indexing for inflation portion of the President's Bill. The bills can be found at [www.house.gov/jct](http://www.house.gov/jct)

It is doubtful that the NTA would get involved in this.





Seuntjens - The memo with the legislative guidelines was supposed to be issued from Nina but I have not seen it yet. Just don't spend too many resources or time on this. Why don't you draft a memo or letter to Nina supporting indexing. Get it on the record.

Woo - Which bill would be best?

House Bill - 22

Senate Bill - 135

Senate Bill - 467

Smathers - Will Joint Committee do anything with this?

Seuntjens - The Joint Committee will not work this as it is not an action item. Submit a written request to the Joint Committee for May.

**ACTION: Subcommittee should meet again and write a proposal. Forward the proposal to Nina Olson and the Joint Committee. Put more depth in this new report with actions you want the Joint Committee to take.**

Bader - Let's try to get it back in the top 20 list in the NTA Annual Report to Congress.

Delzer - Put it in the TAP Annual report too. It can still have an impact even if Nina doesn't put it back in her top 20.

- E-filing - Report Follows

### **Background**

With the 2002 filing season, the IRS instituted "FreeFile," a new electronic system for filing taxes geared to individual taxpayers. With the help of 17 FreeFile partners, the IRS has increased the number of e-filers substantially. March 2003 numbers indicate that individual e-filers are up nearly 30% over this time last year. <sup>1</sup>

### **Scope of the Subcommittee's Work**

The subcommittee met with Mr. Paul Mamo, the IRS Electronic Tax Administration Analyst, in teleconference on March 19, 2003 to discuss the issue. We reviewed the original Free File Alliance Agreement between the IRS and software providers willing to participate in the program. The IRS's involvement is limited and thus, a taxpayer leaves the IRS website and enters a commercial software website to prepare a FreeFile return.

Members of the subcommittee attempted to enter basic returns on E-file Alliance members web sites with mixed results. A few of the Alliance members' sites were exceptional--for example, TurboTax and Free 1040 Tax Returns, Inc.; on others, it proved difficult to enter data or locate the "free" button. Some sites were unavailable to use and impossible to access, others indicated missing data on the return, but with no locator or clear explanation of what was missing on the screen. Many providers limited forms available for free-filing, some non-filable exceptions were Forms 8283 (non-cash contributions), Schedule C (small business), and K-1 (partnership income). In addition, fees were charged at some of the sites for storage of the completed return and to file a related state-tax return.

Subcommittee members reviewed numerous articles on e-filing that ranged from glowing recommendations to taxpayer's reporting of concerns and problems. Some of the themes that were



repeatedly mentioned were: Marketing of related services; inability to bypass charges for filing; difficulty returning to an incomplete return; and, certain necessary forms unavailable.

On the other hand, some taxpayers were very satisfied with the services that they received and intended to e-file again next year.

### **Taxpayer Concerns**

Because of the link from the IRS web site, taxpayers are interpreting Alliance members as being endorsed by the IRS. The actual criteria for selection of the providers were a capability to handle and transmit a large number of electronic returns and a willingness to participate.

Taxpayers who used one of the FreeFile sites for tax preparation expect it to be what it says it is--free tax preparation for those who meet certain criteria. Often it is a free federal tax return with marketing of other related consumer services--including mortgage refinancing and Refund Anticipation Loans (RALs)--and a charge for filing a state return.

### **Recommendations**

1. Limit the number of FreeFile Alliance members.

The initial Agreement between the IRS and the Consortium of FreeFile Alliance members specifies that the term of the Agreement will be three years with an automatic option to renew. The number of providers should be limited, either as Alliance members resign from the consortium; or, based on input from and/or dissatisfaction of users.

2. Standardize the software across providers.

Taxpayers would appreciate standard features, no matter what provider they select to file their return. Easy access to forms not available for free-filing, upfront disclosure of fees for storage and state filing, and the opportunity to return and complete the return are areas where standardization would be helpful.

3. Limit commercialization/marketing of firm's other services to users.

Based on the business of the provider, seemingly pertinent products and services are marketed to taxpayers. It is the suggestion of the committee members that the marketing of Refund Anticipation Loans (RALs) to taxpayers who opt for Direct Deposit of Refunds should be eliminated. Taxpayers should be clearly informed that when they utilize direct deposit of their refund that the process from filing to a refund in an account takes only 10 days. Therefore "refund anticipation" loans are unnecessary. All members agreed that RAL's should have never been a part of the Free File Alliance Agreement, and should be eliminated.

4. Allow taxpayers to download returns and store them on their personal computers.

FreeFile Alliance members should provide taxpayers with the option of downloading their files and storing them, possibly as text files only. This would assist taxpayers meet the agency's requirement of keeping their returns for three years. In addition, the taxpayer will need to refer to his/her previous year's filed tax forms to complete the next year's taxes in a timely manner. Thus a "hardcopy" downloaded from the free-filing site is most desirable.

5. A point-of-service survey should be available for every return attempted.



All taxpayers who attempt to use FreeFile services should be surveyed as to their success in completing a return and their evaluation of the process so that improvement may be made. According to Mamo, the "Contact Us" link on the IRS web site had generated over 5000 e-mail responses from taxpayers who used FreeFile by the date of our meeting. However the committee members felt that this was not a sufficient form of feedback.

All members agreed there should be a method to effectively survey taxpayers who use FreeFile. We recommend a link back to an evaluation form on the IRS website or a point-of-service survey at a independent website to gather feedback from all users.

6. Have the IRS convert FreeFile Alliance members to independent contractor status with the agency, and pay a nominal fee per e-filed return.

Committee members recommended consideration of expanding the services of FreeFile Alliance members to include answering taxpayer questions, accessing records, and generally replacing the customer service function of the IRS. Because of the tax savings of e-filed returns versus paper returns, subcommittee members recommended a nominal fee-for-service for each return e-filed by an Alliance member. More extensive services provided by Free File Alliance members would allow for substantial cutbacks in IRS customer service and align with other outsourced services.

7. Allow taxpayers to file returns directly with the IRS and bypass the middleman.

Mamo characterized taxpayers who prepare their own returns using commercial software and send in the paper forms as "low hanging fruit on the tree." An article in the Washington Post states, the IRS is "devising a web-based system that would allow taxpayers to file their taxes directly on the agency's web site."

8. Involve TAP members as partners on the review team.

Subcommittee members agreed with the National Taxpayer Advocate who recommended the inclusion of TAP members in the review of the FreeFile process.

### **Conclusion**

FreeFile is an initiative created to help the agency reach its long-range goal of 80% of all returns submitted by 2007 will be electronically filed. The advantages for a taxpayer who files electronically are improved accuracy, none to few computational errors, and receiving faster refunds. This appears to be a win-win situation, especially without a fee for filing. It is imperative that the first year of this project is carefully evaluated, and a survey of taxpayers who used the free services completed. Then, improvements to the system can be made. Future success and sustained growth of individual e-filing depend on it.

### **NOTES AND REFERENCES**

<sup>1</sup> IRS News Release: IR-2003-33. "Strong Growth in Computer Returns and Federal/State e-file," March 12, 2003.

<sup>2</sup> "Free On-Line Electronic Tax Filing Agreement," October 30, 2002.

<sup>3</sup> "Taxpayers may be able to file directly to the IRS," January 26, 2003.

### **End of Report**

DeMarais - Some TAP members would like to be involved in the evaluative process for next year. TAP should have input.



Seuntjens - Agrees. #8 in the report is critical. The Joint Committee will look at the whole report.

Hermann-Pariente - Can an executive summary be put on top of this report with the recommendations ranked?

Seuntjens - the Joint Committee will use the document as is. The subcommittee can add things as need be.

### **Discussion of New Issues**

- Complexity of Real Estate - Seuntjens will work on this issue during the summer months. Woo and Castleberry volunteered to work this issue with him.
- Elimination of Tax Dividends - Wilson saw an article on this in the Wall Street Journal this morning (4/14/03). It is being discussed by lawmakers. On hold.
- Redesign Form 2441, Child and Dependent Care Expenses
- Improve Calculation Contribution for the SEP and SIMPLE - This is a procedural issue. This is something the committee could make an impact on.
- Joint Dependent Status - Legislative issue.
- Standardize W-2 - Discussed at the meeting in Kansas City.  
What about putting a barcode on the W-2?
- Retiree Withholding - DeMarais and Hermann-Pariente will work this issue.
- National Standards for Food/Housing OIC - Not realistic numbers.
- Schedule D Threshold to \$1500
- Eliminate Schedule R/Elderly Credit
- Eliminate 1040A
- Improve Definition of "Passenger Auto"
- Volunteer E-Filing - Need to improve the system. This is a uniformity issue. Seuntjens asked whom this would be directed to? McQuin - We could support this with SPEC. DeMarais and Hermann-Pariente will work this issue.

**ACTION: All issues without volunteers to work will be put into the parking lot.**

### **Outreach**

Hermann-Pariente - Was in contact with Congressman. She is building a list of associations who might be interested in a TAP presentation.

Bader - Has been very busy with multilingual committee. She is traveling to Cincinnati to look at the kiosks. She is also working the ID theft issue of Rev. Maryannah Mosley.

Castleberry-Spoke at an OK Congressional Liaison meeting. Also talked to a taxpayer referred by the staff. Taxpayer had a serious problem with AMT as she won an SSA recovery of \$160,000.00. One-half the dollars went to the attorney, but all was taxed for AMT purposes.

DeMarais - Made a presentation to the Freelance Communicators. Still handing out forms at the library. Another SRMLC meeting coming up.

Hollingsworth - Will attend SRMLC meeting after the tax season.

Seuntjens - SRMLC meeting coming up.

Smathers - Continues to attend the SRMLC meetings.



Warren - Met with the North Texas Practitioners Council. Will also be contacting other organizations.

Wilson - Went to a Congressional Liaison meeting and spoke about TAP.

Woo-Attending the Congressional Liaison meeting the first week in May in San Antonio.

**Office Report**

**ACTION: Delzer will send out an interest sheet for the upcoming tax forums:**

**St. Louis: August 19-21**

**San Antonio: September 2-4**

**If you live in the vicinity and wish to attend, please let her know.**

Is anyone interested in combining the next face-to-face meeting with a tax forum?

We are still waiting to hear from National Office about the power point CDs.

**Public Comment**

**Steven Bankler:**

Bankler stated he was concerned that he did not get the sub committee reports before the meeting. He stated electronic filing efforts aimed at low-end preparers for the masses. IRS has trouble targeting high-end preparers and the problem is the rules are too strict. It should be that if you can file it on paper, you can file it electronically. For instance can't e-file if have home office for two businesses or if you have a W-2 with 50% withholding. Committee seems to meet only with IRS analyst, no paid preparers. Only seeing one side of the story. Should review IRS e-file program.

As far as the face-to-face meeting, the Tax Forum is a good idea. Committee should let people know they are there. Other problem is that there is no way to contact the members individually. Website does not list emails, addresses or phone numbers.

Bankler stated he does not like the meeting format. He believes the public should be allowed to speak after each segment of the agenda.

**Kenneth Eichner:**

Eichner stated the committee should make better effort to communicate.

He stated the definition of a car, as opposed to a truck is simple--it is less than 6000 lbs.

Eichner stated that there is an injustice, in regard to AMT, for employees who are not reimbursed for their mileage. They often lose their miscellaneous deduction for mileage because of the AMT. He asked how the dates were chosen for the Tax Forums.

Eichner recommended the members read the National Taxpayer Advocate Report to Congress. He said it was slow, but a good read.

He also stated he wanted to see the sub-committee reports before the meeting.



## **Area 5 Committee Meeting Minutes March 10, 2003**

### **Present:**

- Linda Bader
- Patrick Castleberry
- Laura DeMarais
- John Hollingsworth
- Tom Seuntjens
- Paul Smathers
- Nan Wilson
- Lillian Woo, Chair
- Frank Woods, Jr.
- Dianne Glass, DFO

### **Absent:**

- Denise Bigger
- Maria Hermann-Pariente
- Ken Logan
- Jeana Warren

### **Guests:**

- Steve Bankler
- Ken Eichner

### **Staff:**

- Mary Ann Delzer, Program Analyst
- Patti Robb, Note Taker

## **Welcome/Announcements/Review Agenda**

### **Roll Call**

### **Review/Approve Minutes**

Minutes were approved.

### **Subcommittee Reports**

- **AMT** - Smathers reported there has been no sub committee meeting yet, but he has done a preliminary report (See Attachment #1.) They will meet on Tuesday, March 11, 2003 at 10 a.m. CST. DeMarais mentioned that Turbo Tax has an AMT calculator on line.
- **E-filing** - Hollingsworth reported the subcommittee will have their next conference call on Wednesday, March 19, at 11a.m. CST. The members have generated a list of possible issues to look at further. They will be speaking with an IRS representative from the Electronic Tax Administration.



**ACTION:** Delzer will re-send Area 4's e-file issues to the subcommittee for consideration of working jointly.

**ACTION:** Delzer will verify if any other areas are working e-file issues.

### Discussion of Issues

- **Offer-In-Compromise (OIC)** - Castleberry (Report is Attachment #2)
- **Innocent Spouse** - Castleberry (Report is Attachment #2)
- **Role of the NTA** - Castleberry (Report is Attachment #2)

Seuntjens - We need to interface with the NTA.

Castleberry - In his opinion, the LTAs are not terribly aggressive when defending taxpayers. They are not independent from the IRS. They seem to be avoiding using written orders. They seem to rely more on oral TAOs. The NTA staff has an incredible workload. He has a sense that they are concerned about not having bad blood between the IRS and TAS. The Advocates should report to Treasury, not the IRS. This issue is being addressed by the IRS right now. (Innocent/Injured Spouse is being addressed by the IRS too.)

Glass - When a case comes to the LTA, the case worker gathers the needed information. If the case worker wants to take action and the IRS disagrees, the case worker will take it to their manager. By the time the case gets to the LTA, it has usually been resolved.

Woo - What about the lack of independence?

Glass - The LTA reports to the Area TA, who reports to Henry Lamar, Deputy National Taxpayer Advocate.

Castleberry - How many are on the Austin staff? Do they socialize with the rest of the IRS personnel?

Glass - Yes, they do socialize with other IRS personnel.

Castleberry - Does that make them reluctant to go against their wishes?

Glass - No.

Woo - Having access to others in IRS could help streamline the process.

Castleberry - Doesn't think the TAS should be called independent.

Woo - Do we want to pursue this?

Smathers would like to get a better understanding of the LTA and then revisit this issue. Consensus was to put this issue in the parking lot for now.

- **Complexity of Real Estate/Passive Activity** - Seuntjens will report at the next meeting.

### Outreach

Bader - Visited two VITA/TCE offices run by AARP

Castleberry - Will be doing a couple outreaches next month

DeMarais - Visiting local TCE sites twice a week. She goes to the library on Saturdays to handout forms and answer questions.

Hollingsworth - Will attend SRLMC meeting after the tax season.

Seuntjens - Met with TAP Director Deryle Temple last week. The Joint Committee will be meeting in Washington, DC, in May, and will get more clarification on issues then.

Smathers - Spoke to a local club. AMT was mentioned several times.

Wilson - Will be speaking at a Congressional liaison meeting this week.

Woo - Visited with congressional staff with LTA Glass.



## Action Items/Office Report

**ACTION:** Delzer will email talking points (script) to DeMarais and Wilson. Cannot send power point presentation on CD or as transparencies at this time. Deryle needs to review to authorize the copies to made.

**ACTION:** Members to contact Delzer if interested in the Tax Products CD-Rom (forms) or the Small Business Workshop CD.

Castleberry - Does not have a subcommittee assignment. Would like to work with the AMT group. Delzer will send Castleberry the call-in information.

## Public Input

Eichner - Why doesn't the panel talk to CPAs as well as LTAs? His opinion is that the main problem is it takes too long to resolve issues.

Bankler - Woo asked that he write his comments and forward them to Delzer. (*Following are his comments*)

1. While I did get a copy of the agenda and the AMT paper, I received no other documents. Since I am an active participant and notified you that I would be participating, I would appreciate receiving copies of all documents provided to the committee members, including draft minutes (especially since any corrections to the minutes have been very minor).

2. After the Kansas City meeting, I sent you the following Email (on 2/10/03):

I should have thought of this Saturday. President Bush's tax proposal about the elimination of the double tax on dividends will create ENORMOUS tax complexity. Attached is a copy of the Treasury's proposal/analyses.

While I generally favor the idea - - there needs to be a simpler way to ALMOST accomplish the same goal. This would be an issue that area 5 could comment on, as this legislation will soon be considered by Congress.

According to the IRS Statement of Income (analysis of Individual Income Tax Returns for 2000) some 34.1 million taxpayers had dividend income (8.3 million with AGI less than \$25,000) out of a total 129.4 million returns. In addition, 6.6 million returns had capital gain distributions, 16.0 million had taxable net gains and 6.9 million had taxable net losses, so that the proposal probably effects over 50 million individual taxpayers (Plus ALL corporate taxpayers).

If I can of further assistance, please contact me.

I was under the impression that this was going to be shared by the committee for their consideration. I was quite surprised when it wasn't on the agenda and evidently not sent to the members.

3. Regarding the E-File subcommittee:

A. The consortium that provide "free E-filing" from a link to the IRS web site has the effect of reducing competition from the smaller tax preparer. A taxpayer goes to the web site and completes information for their tax return. If they do not "qualify" for a free return, they are offered E-filing for a fee. SINCE





they have basically entered their tax information, most will not reject the offer, shop for another preparer, and re-submit the information.

B. Taxpayers who have filed bankruptcy (over 1,000,000 per year?) are not eligible for a direct deposit of their refund. If these taxpayers file their return electronically, they probably request a direct deposit of the refund. After the return has been processed, the taxpayer calls to inquire about the refund. They then work with an IRS person and another form is completed over the phone. Therefore the cost of processing these returns is extremely high and inefficient!!

4. During the meeting, a taxpayer advocate commented that by the time the facts are gathered and her office is involved, the case is usually closed. She has issued only 1 TAO. This appears to be a major problem. Since the taxpayer (or representative) had a problem and called the taxpayer advocate. It seems to me that having substantially all of the cases "closed" without the intervention of the advocate minimizes the effectiveness of the advocate to the taxpayer.

5. I am now questioning the independence of this committee. During the meeting, you stated that you could send out the script, but not the actual power point presentation, as it was being reviewed. My understanding was that a member of the committee prepared (or somehow acquired) the script and power point presentation. I don't understand why members of the committee need IRS approval to pass around this information.

6. Finally, while I did not bring up in my comments at the meeting, I am trying to understand the rules for these meetings. In that regard I sent you the following E-mail (on 3/03/03) and have not received a response:

Since the meeting in Kansas City, I went to the GSA web site and quickly reviewed the rules for Federal Advisory Committee management. After that, I went to the IRS web site to try and locate any agency rules and was unable to locate them.

As I understand it (and I could be entirely wrong) the TAP regional meetings (and telephone conferences?) are really considered "subcommittee" meetings and are subject to the rules of the governing agency (IRS?? or Taxpayer Advocate??)

I would appreciate your assistance in putting me on the correct path. Where do I go from here?

**Meeting adjourned.**

## **ATTACHMENT #1**

### **The Alternative Minimum Tax; A Review of Its History, the Effects on Tax Payers and Policy Recommendations**

**Prepared for the Taxpayer Advocacy Panel Region 5 Sub-committee on the Alternative Minimum Tax Paul W. Smathers, Chair**

#### **History of the AMT**

In January, 1969 Congress was informed by Treasury Secretary Joseph Barr that 155 individuals with incomes above \$200,000 had paid no income tax in 1966. This revelation created an uproar in the general public. Members of Congress received more letters about these 155 individuals in 1969 than



they received about the Vietnam War. Politically they had to take action to assure the richest paid their fair share of taxes, Thus wa born the AMT. The results of this seemingly innocent attempt at tax fairness would have a reach that few if any observers anticipated. In 1999 over 1,000,000 taxpayers were subjected to this tax. It is estimated about 36,000,000 taxpayers will be subject to the AMT b7y 2010. The Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA) actually resulted in about 13,000,000 additional taxpayers being subject to the AMT by 2010.

Most legislative proposals in the 107th Congress were not even given a committee hearing. The only significant reform of the AMT by the 107th Congress was legislation increasing the exemption level. This legislation includes a sunset provision that takes effect in 2011. At that time the exemption reverts to current levels.

The 106th Congress passed and sent to President Clinton HR 2488, The Tax Reform Act of 1999 which included a phase-out of the AMT from 2005 to 2007. This act was vetoed by President Clinton who said, "By using projected surpluses to provide a risky tax cut, HR 2488 could lead to higher interest rates, thereby undercutting any benefit for most Americans by increasing home interest payments, car loan payments, and credit card rates."

As of this report, three bills have been introduced in the 108th Congress dealing with the AMT. These are:

HR 22 by Representatives Houghton and Amo (NY-29)

This Bill would increase the exemption to \$75,000 for joint filers and \$56,000 for single taxpayers. The exemption would be inflation indexex rounded to the nearest \$100.

HR 43 by Representatives Collins and Mac (GA-8)

This Bill repeals the AMT.

S 102 by Senators Lincoln and Blanche (AR)

This Bill removes the sunset provisions of the Economic Growth and Tax Reconciliation Act of 2001.

### **Policy Recommendations**

1. Index the AMT for inflation.  
The Urban Institute estimates this would result in a 70% reduction in filers subject to the AMT. The reduction for those filers with incomes between \$15,000 and \$75,000 is estimated at 90% and those with AGI of \$75,000 to \$100,000 at 84%.
2. Allow persona; exemptions (do not subject them to phase-out) and non-refundable credits along with indexing for inflation.  
Estimated 83% reduction in AMT filings.
3. Allow deduction of State and Local Taxes.  
Would remove the unfair penalty to taxpayers living in high tax States.

Note: California requires income tax be withheld on the sale price of a second home at the time of the sale regardless of the amount of gain or loss on the sale. Claims for refunds must be made when filing the state tax return. This may result in many additional California residents finding themselves subject to the AMT if they itemize and deduct state and local taxes.



## ATTACHMENT #2

CASTLEBERRY REPORT TO TAP AREA 5 COMMITTEE MEMBERS  
BRIEFING ON  
INNOCENT SPOUSE RELIEF, OFFERS IN COMPROMISE &  
NATIONAL TAXPAYER ADVOCATE PROGRAM

### I. Innocent Spouse Relief.

**A. Introduction:** When a married couple sign and file a "joint" income tax return, that is, claim "married filing jointly" filing status on a particular return, they become "jointly and severally liable" for all tax, penalty and interest due with respect to that return. The liability applies not only to the tax bill that the couple calculated themselves, but also to any tax increase resulting from an IRS audit. The significance of the liability being "joint and several" is that (i) both spouses are liable for the original tax bill as well as for any later increase arising from that return; and, (ii) the full tax bill can be collected from either spouse at any time within the 10 year statute of limitations, regardless of whether the couple remain married.

In recognition of the antiquated belief that wives were often uninvolved and unaware of the details of the family's finances and tax planning, Congress created a statutory right for an "innocent spouse" to be freed from liability for audit tax increases arising from a joint return.

The typical situation where such relief applies is one where one spouse conceals income from the other spouse and fails to report that income on the joint return, **and then** the IRS finds the concealed income during audit.

**B. Old Law.** Prior to 1998, an innocent spouse could obtain relief from liability for an audit tax increase arising from a joint return if he/she could prove (burden of proof on the spouse, not IRS): (i) there was a **substantial understatement** of tax attributable to a **grossly erroneous item** of the other spouse, (ii) the innocent spouse **did not know or have reason to know** of the substantial understatement when he/she signed the return, and (iii) under all facts and circumstances it would be **inequitable** to hold the innocent spouse liable for the deficiency in tax.

If a spouse proved his/her innocence under this test, then the innocent spouse was no longer liable for the tax increase arising from the grossly erroneous item, although the innocent spouse remained liable for any unpaid portion of the original bill, and for any tax increases not arising from the grossly erroneous item.

This rather demanding proof standard denied relief to many a deserving spouse, and never applied to underpayments (typically, the unpaid portion of the original, admitted tax bill), only to understatements (the audit increase). The requirement of "substantial understatement" meant that the unreported income had to be a large amount in relation to the entire return. For example, \$5,000 of omitted income on a return reporting \$20,000 of income would be substantial, while the same amount on a return reporting \$200,000 of income would not be substantial.

Further, the tax error had to be "grossly erroneous" meaning, generally, that the error had to be a glaring one, not simply a reasonable difference of opinion with IRS as proper tax treatment. Thus, stated simply, the tax error had to be in the nature of tax fraud or evasion.

In addition, the spouse had to prove that he/she did not have actual knowledge of the error (subjective knowledge), and that a reasonable person in his/her place would not have known of the error (objective knowledge).

Finally, the relief would be granted only if "equitable" under all facts and circumstances, so that if the putative innocent spouse was living a rather luxurious lifestyle that would not be supportable but for a lot of available, unreported income, he/she would be denied relief.

**C. New Law.** The 1998 Tax Act repealed the old rules, and replaced them with new, more generous ones. Under the new rules, an innocent spouse can be freed from liability for all understatements (the audit tax increase, not the original bill), regardless of whether substantial or attributable to grossly erroneous items. The old requirements of substantiality and gross erroneousness no longer apply. However, the innocent spouse must still establish that he/she did not **know or have reason to know** of the understatement of tax. Partial relief is available if the innocent spouse proves he/she did not know of the extent of the understatement, meaning the spouse did not know or have reason to know of all of the items, or all of the omitted income, resulting in the understatement. In such case the liability for the deficiency is carved down to the portion of the deficiency attributable to only those items or that omitted income about which the innocent spouse did know or should have known.

Also, it still must be inequitable, under all facts and circumstances, to hold the innocent spouse liable for the deficiency in tax resulting from the understatement.

Finally, there is a deadline for claiming relief. The innocent spouse must elect to claim the benefits of innocent spouse relief by filing a special IRS election form 8857 within 2 years following the date the IRS first began collection activities (e.g., levied on the innocent spouses wages, receipt by innocent spouse of a Notice of Intent to Levy).

**D. New Separate Liability Election.** In addition to the new, more generous, innocent spouse relief, the new law grants divorced or separated spouses the right to elect separate liability treatment on a joint return. The new law allows the innocent spouse to have his/her tax bill for the tax year separately calculated. The separate liability will be limited to that portion of an audit tax increase allocable to the electing spouse (allocated as if such spouse had filed a separate return), with certain exceptions. Obviously, in many cases, the amount allocable to the innocent spouse will be zero.

Qualification for the separate liability election depends on the following. First, the electing spouse **at the time of election** must be divorced, legally separated, or living apart for the past 12 months from the other spouse.

Second, the electing spouse must not be party to a fraudulent scheme with the other spouse to transfer assets to defeat tax collection. (The old phony divorce trick: Hey, let's get divorced. I will give you all of our assets in the divorce, you will claim innocent spouse, and the IRS will get nothing from me because I have no assets left. We will get remarried when the IRS is out of the way.)

Third, the electing spouse must file his/her election form 8857 within 2 years following the first collection activity against such electing spouse.

Fourth, the electing spouse must not have had actual knowledge, at the time of joint return signing, of any item not allocable to such electing spouse that gave rise in whole or in part to the deficiency (unless the return was signed under duress). Thus, to qualify for this relief, only lack of actual knowledge need be proved. The "should (not) have known" test does not apply.

**E. Right to Judicial Review of Innocent Spouse Election and Separate Liability Election.** The electing spouse who receives an adverse decision from IRS on his/her election may petition the United States Tax Court for appropriate relief. The petition must be filed within 90 days following the IRS's certified/registered mail notice of decision, although the electing spouse may file the petition at any time after 6 months following the filing of the election form with IRS and before the expiration of the 90 day period. In most cases, all IRS collection action is suspended (enforceable by injunction if



necessary) during the filing period for tax court petitions, and during the pendency of any tax court proceeding.

**F. IRS May Grant Equitable Relief in Any Case.** If a spouse or former spouse does not qualify for relief under the Innocent Spouse election or under the Separate Liability Election, then the IRS may still grant tax relief to a deserving taxpayer if, under all the facts and circumstances, it is **inequitable** to hold the individual liable for any unpaid tax or any deficiency, in whole or in part. An important distinction here is that the IRS can grant relief as to both audit tax increases, and as to the unpaid portion of the original tax bill.

In practice, the IRS considers a number of factors, including, (i) the taxpayer's current marital status, (ii) whether the taxpayer suffered abuse during the marriage, (iii) whether the taxpayer had a reasonable belief when he/she signed the return that the tax would be paid, (iv) current financial hardship, (v) whether the underpayment or understatement arose from the other spouse's income or activities, and (vi) whether the taxpayer received a significant financial benefit from the omitted income or unpaid tax.

**G. Problem - Processing Delay.** The IRS takes too long, up to 1 year, to process and rule on the innocent spouse claims. Processing delays create problems for deserving taxpayers. Most taxpayers seeking relief are divorced, single parents trying to re-establish their finances. Often these taxpayers have tax liens filed against them, creating credit problems. The relief is usually needed as soon as possible because a taxpayer is trying to obtain a home loan, or to sell a home, or to obtain a credit card, or to qualify for a car loan or for an apartment lease, etc., and the existence of the tax lien prevents all extensions of credit or sales of assets. The IRS does suspend collection of tax during its consideration of the innocent spouse election, but the taxpayer is immobilized financially during the process.

In the IRS's defense, the Innocent Spouse processing staff is but 168 souls, handling approximately 15,000 open files, and involving almost 50,000 separate income tax years. The IRS and the National Taxpayer Advocate are aware of the processing delay problem, and are attempting to implement various screening techniques upon receipt of election forms to separate quickly the non-meritorious claim from the (likely) meritorious.

**H. Problem - Equitable Relief Rarely Granted.** Second, the IRS is not granting equitable relief as broadly as it should. A common complaint among tax practitioners is that, fundamentally, the all purpose "equitable relief" authority granted to IRS was to apply in those instances where a taxpayer does *not* satisfy one of the statutory requirements for innocent spouse relief, or the separate liability election, and, therefore, was to be more generously applied on a case-by-case basis. In practice, however, the IRS appears to have simply created a new set of rigid rules for qualification for equitable relief, many sounding remarkably similar to the statutory rules the taxpayer already was not able to satisfy. Ergo, needy, deserving taxpayers get no relief. Furthermore, as reported to our Area 5 committee in February, case law in some federal circuits seems to equate "knowledge" with a spouse's merely knowing the underlying facts leading to a tax result. The committee should consider whether "knowledge" should also require a finding that the spouse understood the tax result. [Recall the discussion of the 5th Circuit ruling (5th Circuit is in Area 5) where a spouse was denied relief because she knew money had been withdrawn from an IRA, although she had received the written (but erroneous) tax opinion from her CPA that the withdrawal would not be taxable.]

## **II. Offers-in-Compromise (OIC).**

**A. Statutory Authority to Settle.** Congress has granted the IRS the authority to compromise, that is, settle for cents on the dollar, any tax liability because of (a) doubt as to collectibility, or (b) doubt as to liability. The taxpayer serves as offeror, and must submit the offer on an IRS form 656, along with thorough financial statement disclosures. This discussion focuses only on the "doubt as to



collectibility" prong inasmuch as this is the basis for the vast majority of submitted and approved compromises. To qualify for a "doubt as to collectibility" settlement, a taxpayer must prove that he/she has neither the assets nor the income to satisfy the tax bill in full.

**B. Initial Offer Requirements - Processability.** Generally, the taxpayer is to present the offered amount with a completed form 656, although payment is not required at that time. In fact the IRS form 656 has a payment options section that suggests 10-30-60-90 day payment plans, although the taxpayer may propose even longer payout periods. IRS policy requires that any offer encompass all outstanding tax debts. IRS will not settle on a piecemeal basis. Further, with only limited exceptions, the taxpayer must be in compliance as to all other tax obligations, meaning all delinquent returns must be filed, and all current year taxes must be paid.

**C. Stay of Collection During Pendency.** With limited exceptions, the IRS **must** suspend collection activity upon receipt of an OIC. The collection suspension remains during the IRS's consideration of the OIC, for 30 days following rejection of the offer, and during the pendency of any timely filed appeals review of a rejected offer. However, the running of the 10 year collections limitations period is also suspended. If the IRS proceeds with a levy in violation of this provision, a federal court may issue an injunction to halt the violation.

**D. Acceptable OICs - Doubt as to Collectibility.** IRS policy requires the taxpayer to offer a sum of money equal to (i) the taxpayer's net worth plus (ii) the present value of the taxpayer's future income. The present value of future income (PVFI) analysis involves the calculation of the taxpayer's net income after payment of normal living expenses, identical to the process for installment payments. However, the OIC formula requires the taxpayer to add roughly \$5,000 to his offer for every extra \$100 the IRS determines would be available per month for payment on an installment plan, and to disregard for this purpose any payments due on unsecured debts (e.g., credit cards). Moreover, the IRS has developed regional standard living expense tables, limiting taxpayers to specific dollar amounts per month for home mortgages, car payments, utilities, etc. If a taxpayer's expenses exceed these limits, then the PVFI formula naturally increases the acceptable OIC amount because all or a portion of excessive expenses are disallowed.

**Problem - PVFI Formula Too Rigid:** This PVFI formula stymies many an OIC in my experience. In an effort to promote uniformity, the IRS has resorted to inflexible formulas that end up thwarting otherwise acceptable offers. If, for example, the taxpayer has credit card debts that are disallowed because they are unsecured (i.e., debts for which there is no collateral pledged), or has a home mortgage payment that exceeds the local limits, then the taxpayer would have to default on these payments or to declare bankruptcy in order to be able to afford the increased OIC amount. Thus, a compromise of the tax debt does not leave the taxpayer in any better financial position. One goal of the OIC program is to allow taxpayers a "fresh start" following the compromise in order to permit them to recover financially, and thereby to begin paying higher taxes as their income increases. An OIC result that leaves taxpayers worse off financially does not serve that goal.

**E. 1998 Tax Act - New Flexibility.** In 1998, Congress tried to encourage the use of and to streamline the OIC process. The Taxpayer Relief Act of 1997 empowered IRS collectors to review and approve the OIC settlement of any tax debt not exceeding \$50,000. Before the 1997 Act, any settlement over \$500 required approval of the IRS's General Counsel's office. Under the 1998 Tax Act, Congress directed IRS to issue new living expense guidelines for OIC reviews. Moreover, Congress directed IRS to evaluate each taxpayer's unique facts and circumstances, and to dispense with formulas if the end result would deprive the taxpayer of adequate means to provide for basic living expenses. This broad flexibility was intended to permit IRS to consider, for example, the taxpayer's unique need to pay on credit card debts, to send children to private schools, or to keep an automobile, etc.

**F. Additional IRS Flexibility - 1999:** In 1999, the IRS announced new OIC program guidelines, and created a new OIC form, the form 656-A. Taxpayers are eligible for the new program if (i) collection of



the entire tax liability would create economic hardship, or (ii) exceptional circumstances exist that would make collection of the entire tax debt detrimental to voluntary compliance. The IRS cautioned that this new program was intended for the severe cases only. The taxpayer must file both the old form 656 and the new form 656-A setting forth facts to explain why full payment would cause economic hardship or result in an unfair or inequitable situation. Further, the taxpayer must not have a history of delinquent returns or tax nonpayment and, in business cases, must be current on payroll taxes for the previous two quarters, and the quarter during which the offer is made. Examples of severe hardship cases are (i) debilitating illness, overwhelming past, present or future medical expenses; (ii) liquidation of available assets would deprive taxpayer of means to earn a living; and (iii) inability to borrow against assets the taxpayer needs to earn a living.

**G. Permanency of the Accepted OIC.** Once the IRS accepts the offer and the accepted amount is paid, the underlying tax liability is legally settled. The compromise agreement cannot be set aside except for concealment of assets, fraud, or mutual mistake of material fact. However, where the OIC is accepted due to doubt as to collectibility, the IRS form 656 conditions the permanency of the settlement on the taxpayer's promise to comply with all provisions of the Internal Revenue Code relating to filing "my . . . returns and paying my . . . required taxes for 5 years from the date the IRS accepts the offer." Thus, if the taxpayer has a payment or filing problem in any of the next 5 years, the settlement is retroactively abolished, and the full, once settled liability becomes fully collectible by IRS.

**H. Problem - 5 Year Rule Too Harsh.** A successful OIC settlement normally takes a great deal of time, effort and money to close. Having that effort made useless because the taxpayer had a new tax problem within the next 5 years is a senseless waste of effort. I recommend that our panel encourage the IRS to cancel the 5 year rule. In its place, the IRS should consider the occurrence of new tax problems within 5 years as a factor for denying a new OIC to settle those new tax problems.

**I. Problem - Processing Delay.** As part of its effort to restructure itself, IRS has consolidated/centralized all OIC processing in one New York office. The laudable, primary purpose of consolidation is to create OIC processing efficiencies. What has occurred however is delay. The OIC process requires a great deal of interaction between IRS and the taxpayer. The IRS routinely requests thorough documentation of assets, debts, income and expenses from the taxpayer, often spanning three to four separate requests. The New York office reportedly loses documentation received from all over the U.S., and the geographical distance prevents any rapport and trust to develop between the taxpayer and IRS. The result has been fewer OICs approved, and much greater expense to the taxpayer for professional help.

In the IRS's defense, the number of IRS staff now "working" OICs is now only 500 people, down from over 1,000 two years ago. 113,700 new OICs are filed each year, meaning those 500 people must review over 200 cases per person per year. 65% of the OICs take longer than 6 months to resolve. In order to streamline handling the IRS is considering a number of changes, including (a) imposing a one time filing fee ("user fee") to discourage frivolous filings and to offset processing costs; and, (b) reducing the financial documentation required to verify income for average wage earners.

### **III. National Taxpayer Advocate.**

**A. In General.** The 1998 Tax Act created a new federal job, the National Taxpayer Advocate. The NTA, currently Nina Olson, and her staff are to represent aggrieved taxpayers in disputes with IRS. The NTA presides over the Office of the Taxpayer Advocate, and is appointed by the President to serve for 5 years. The NTA must have independence from IRS both before and after NTA service, but have knowledge of tax law, customer service, and experience in representing individual taxpayers.

**B. NTA Staffing.** The NTA has representatives in each IRS area office through the Taxpayer Advocate Service (TAS). The TAS staff breakdown is as follows: (i) 1 NTA, (ii) 1 Deputy NTA, (iii) 9 Area



Taxpayer Advocates, and (iv) 74 Local Taxpayer Advocates. The LTAs report to the ATAs who in turn report to the Deputy NTA, who in turn reports to the NTA. All persons comprising the NTA staff are called informally by IRS as "Associate Advocates."

**C. NTA Role.** A taxpayer may invoke NTA involvement in his/her case at any time during the collection, audit or judicial process. It is the basic duty of the NTA staff to help taxpayers resolve problems by taking an **objective** look at their problems and working with IRS Operations to ensure a **fair** outcome. All of the NTA staff have received specific TAS training to ensure they understand their role, specifically, the importance of speaking on behalf of the aggrieved taxpayer, educating taxpayers about their rights and duties, and protecting taxpayer rights and reducing taxpayer burden whenever possible. Moreover, NTA staff are expected to look at all the taxpayer's problems and issues from the taxpayer's point of view, and in line with the existing law.

**D. NTA Hammer.** If upon examining a taxpayer's problems the NTA staff finds that the taxpayer is suffering or about to suffer a **significant hardship** as a result of the manner in which IRS Operations is applying the tax laws, then the NTA staff may issue a **Taxpayer Assistance Order** (TAO). The TAO can take a variety of forms, including, ordering the IRS to release seized property, or to release tax liens, or to prohibit the IRS from taking certain collection action. Not surprisingly, TAOs are used sparingly by the NTA.

**E. Significant Hardship.** Federal tax law defines "significant hardship" as including (but not limited to): the threat of an "adverse action" by the Service; a delay of more than 30 days in resolving taxpayer account problems; the incurring by taxpayers of significant costs while they wait for relief from a Service action; irreparable injury to, or long-term adverse impact on, a taxpayer if relief is not granted. The Taxpayer Advocate may consider issuing a TAO if there is either significant hardship, as defined by the statute, or under such other requirements as may be prescribed by regulation. The statute also provides that when "any Internal Revenue Service employee is not following applicable published administrative guidance (including the IRS employees' Internal Revenue Manual)," the Taxpayer Advocate must consider all the facts **in the light most favorable to the taxpayer** when deciding whether to issue a TAO.

**F. NTA Workload.** The NTA use has been high. Total cases in FY2000 numbered 256,000, in FY2001 272,000, and in FY2002 227,000. Each year the NTA presents a written report to Congress outlining (1) the nature and rank of taxpayer complaints, and (2) the NTA's recommendations for legislative and administrative change. Considering that there are less than 100 NTA staff nationwide, these case numbers show that the staff is already overwhelmed.

**G. Castleberry's Experience with NTAs.** It has been my professional experience that local NTA representatives (the LTAs) are not truly independent, inasmuch as they maintain offices in the same IRS building as the IRS collectors and auditors, seem to know IRS personnel by first names, are called into cases by IRS personnel quite informally, and do not seem comfortable "advocating" aggressively on the taxpayer's behalf. In fairness, the NTA staff is not intended merely to get the taxpayer what he or she wants, but to ensure the tax laws are being applied properly and fairly in a particular case. My experience thus far is that the NTA is serving almost as a mediator in disputes, rather than as a staunch, aggressive taxpayer friend. The NTA is useful, however, in that its representatives will serve as yet another sounding board for taxpayer complaints about perceived mistreatment in the collection process. Moreover, the NTA's FY2001 and FY2002 annual reports reveal a growing sophistication regarding taxpayer problems, and a growing resolve to make the tax system better.



