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IRSAC Recommendations Include Adequate IRS Funding and Measures to Reduce Business Identity Theft

At a public meeting on November 19, the IRS Advisory Council (IRSAC) presented its annual (2014) report [www.irs.gov/PUP/taxpros/2014-IRSAC-Full-Report.pdf]. The report consists of one general recommendation from the entire Council and individual recommendations from each of the four subgroups – Office of Professional Responsibility; Large Business and International; Small Business/Self-Employed; and Wage and Investment. Karen Salemi, CPP, FLMI, who represents the APA on IRSAC, is a member of the Small Business/Self-Employed Subgroup.

IRS funding

IRS Commissioner John Koskinen opened the meeting by thanking IRSAC for its efforts and recommendations to help the IRS improve its efficiency and effectiveness. He took the opportunity to reiterate his concern about the state of the IRS budget, noting that the IRS has lost 13,000 full-time employees over the past four years.

The IRSAC report echoes this concern, stating that, "the IRS needs sufficient funding to operate efficiently and effectively, provide timely and useful guidance to taxpayers, and enforce current law, so that respect for our voluntary tax system is maintained." The report discusses several negative effects of recent budget cuts including "declining federal revenues," a "lack of necessary Service personnel at required experience levels," the "negative effects on the Service's ability to administer the law fairly," a "decrease in the quality of taxpayer service," and the "effects on a system based on voluntary compliance."

Business identity theft

The Small Business/Self-Employed Subgroup report addressed the growing problem of business identity theft. While similar to individual identity theft, business identity theft may be more complex and can be accomplished through different methods. "A fraudulent business entity tax return can be filed that generates a larger refund than would be obtained on an individual income tax return," or multiple fictitious W-2 forms may be filed to claim fraudulent refunds. The report notes that business identity theft is increasing "because of the potentially larger payoffs available." Recommended solutions involve greater protection of employer identification numbers (EINs) and increased support for victims of business identity theft.

IRSAC notes that, "while social security numbers receive some level of protection, there is no protection for business identification numbers." One problem is the general availability of EINs. By law, they are "publically available to every single employee to whom the employer issues a W-2 and to every vendor or investor or other individual or business to whom the entity issues a Form 1099." Additionally, businesses must provide an EIN upon receipt of a Form W-9.

IRSAC recommends methods to protect EINs, including: expansion of EIN truncation, procedures for surrendering an EIN when no longer in use, and use of an e-authentication system to determine the validity of an EIN request. IRSAC also suggests that the IRS should develop resources for victims of business identity theft such as a dedicated point of contact, a webpage with information on steps victims should take, and additional outreach concerning Form 14039-B, *Business Identity Theft Affidavit*. ■

APA Attends Meeting With New Jersey Lawmakers

On November 17, New Jersey Assemblyman Wayne DeAngelo held a meeting in his Hamilton office to discuss A.B. 3156 [www.njleg.state.nj.us/2014/Bills/A3500/3156_I1.PDF], which aims to reduce the amount of wrongful unemployment payments made by the state each year. Participating in the meeting were Stefanie Riehl of the New Jersey Business and Industry Association, Pete Isberg of the National Payroll Reporting Consortium, and Curtis Tatum of the APA. Anthony Bucco, the other primary sponsor of A.B. 3156, joined the meeting by phone.

While all involved agreed that minimizing unemployment insurance overpayments is a worthy goal, the conversation largely centered on the administrative burden that the proposed legislation would cause employers. In its current form, the bill would require employers to file monthly wage reports. Monthly wage reporting in general would create an administrative burden, but the problem would be exacerbated in New Jersey because of the state's expansive definition of wages. The monthly wage reports would require financial data, such as dependent care payments, stock options, room and board plans, and meal plans that employers may not readily have available on a monthly basis.

Industry representatives noted that new hire reporting provides the New Jersey Department of Labor and Workforce Development with information more quickly than the proposed monthly wage reports would do. DeAngelo suggested that employers could file an Employee Status Report, to report employees who are terminated, furloughed, laid off, separated, or granted leave without pay. He envisioned that the reports could be filed in a manner similar to new hire reports. While this proposal would add a new reporting requirement for employers, it would be much less burdensome than monthly wage reporting. Further, employers might be able to use existing new hire reporting procedures for the termination reports. Details of the proposal have yet to be finalized. ■

APA Member Appointed to ETAAC

On November 17, the IRS announced three new appointments, including APA member Stephanie Salavejus, CPP, to the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC members meet regularly to discuss electronic tax administration issues and look for ways to increase electronic tax filings. In addition to regular meetings, ETAAC members also produce an annual report to Congress that includes recommendations for improvements in electronic tax administration. ETAAC members generally serve a three-year term [www.irs.gov/uac/Newsroom/IRS-Announces-New-Members-for-ETAAC-2014]. ■

CFPB Proposes Regulations Applicable to Payroll Cards

On November 13, the Consumer Financial Protection Bureau (CFPB) held a field hearing in Wilmington, Del., to discuss proposed regulations on prepaid cards, which have been sent to the Government Printing Office for publication in the Federal Register [http://files.consumerfinance.gov/f/201411_cfpb_regulations_prepaid-nprm.pdf].

Need for regulation

The development of the prepaid card market has been dramatic. CFPB Director Richard Cordray noted that "the number of all prepaid card transactions is growing rapidly, jumping from 1.3 billion in 2009 to 3.3 billion in 2013 – an increase of more than 150% in only four years." Moreover, "payroll cards are the most common example of prepaid products used by third parties to distribute funds to consumers. In 2013, over five million payroll cards were issued, and $30.6 billion was loaded onto them."

Cordray said that the purpose of the proposed regulation is "to bring strong consumer protections to the prepaid market." He also said that the proposed regulations "would apply to prepaid cards that are used to distribute payroll wages, certain government payments, child support payments, and government benefits that are not needs-tested such as unemployment insurance and public pensions."

Highlights of the proposed regulations

The CFPB's proposed regulations for prepaid accounts would require account issuers to provide disclosures about the terms and conditions of the account. While the proposed regulations do not prohibit prepaid account issuers from offering a credit option with the account, the regulations extend consumer protections similar to those offered for traditional credit cards. Importantly, an account issuer would not be able to take funds from a prepaid account to cover a credit payment when funds are deposited into the account unless authorized by the holder. The regulations would also require that account information to be more readily available to account holders.

The proposed regulations would require prepaid account issuers to provide two sets of disclosures concerning the terms and conditions of the account, a short form and a long form. The short form would include key terms that a consumer could use to quickly compare to other account options. The long form would contain additional terms and details about the account. In addition to providing the disclosures to consumers, account issuers would also have to provide them to the CFPB, for posting to the Bureau's website. The intent would be to provide information to consumers so that they can make informed decisions in light of fees and other provisions of the account. Referring to the disclosures as "know before you owe," Cordray said they "would provide people with clear information up front." *Note:* This provision may be difficult in the payroll card context, because there may be differences in terms and conditions offered by the account issuer to individual employers.

Two provisions in the proposed regulations apply directly to payroll cards:

- A notice would have to be added to the short disclosure form that informs employees that they are not required to receive their pay on the payroll card and may request payment by another method.
- Currently, account issuers are required to provide a history of account transactions that covers a period of 60 days. The proposed rule would extend the period of time these statements must cover to 18 months.

Panelists' observations

Susan Weinstock, Director of Consumer Banking at the Pew Charitable Trusts, noted that because not all terms and conditions may be available to a consumer when purchasing a prepaid card, it may be hard for a consumer to truly comparison shop. Lauren Saunders, an Associate Director of the National Consumer Law Center (NCLC), raised a similar concern, noting that account information can be difficult to find, especially for consumers who do not have a computer. Saunders then cited a NCLC press release to the effect that "the rules will increase consumer and employee confidence when they use prepaid and payroll cards," and restated her position that "overdrafts should be prohibited entirely on prepaid cards. Consumers should be able to rely on a prepaid card being truly 'prepaid' and as a safe way to control spending" [www.nclc.org/images/pdf/banking_and_payment_systems/pr-cfpb-prepaid-cards-nov2014.pdf].

APA will comment

The APA's Government Relations Task Force Subcommittee on Payroll Cards has already begun drafting comments. If you have any feedback concerning the proposed regulations that you would like to share with the Subcommittee, please contact Curtis Tatum, Esq., APA Manager of Government Relations, at ctatum@americanpayroll.org. The deadline for public comment will be 90 days from the date that the rule is published in the *Federal Register*, which is expected soon. ■