



May 25, 2017

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**RE: Recommendations pursuant to Executive Order 13771 and
Executive Order 13789**

Dear Secretary Mnuchin:

On behalf of the Coalition for Effective & Efficient Tax Administration (“CEETA”), we are writing you concerning Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” signed by President Trump on January 30, 2017 and Executive Order 13789 “Identifying and Reducing Tax Regulatory Burdens,” signed by President Trump on April 21, 2017. CEETA is a coalition of companies and trade associations that seeks to effect constructive administrative and legislative changes to ineffective and inefficient IRS practices and procedures.

Executive Order 13771 instructs federal agencies to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification. Executive Order 13789 instructs the Department of the Treasury to review all significant regulations issued by the Department on or after January 1, 2016 that (1) impose an undue financial burden on U.S. taxpayers, (2) add undue complexity to the Federal tax laws, and (3) exceed the statutory authority of the Internal Revenue Service.

We respectfully submit this letter providing our recommendations for Department of the Treasury (Treasury) regulations and Internal Revenue Service (IRS) guidance that should be considered for repeal pursuant to Executive Order 13771 and Executive Order 13789. We assert that the following Treasury regulations and IRS guidance, which inhibit sound and fair tax administration, should be repealed because they impose an undue financial burden, add undue complexity, and exceed the IRS' statutory authority.

I. Treasury Decision 9778 (I.R.C. § 7602)

On July 14, 2016, IRS and Treasury finalized regulations under I.R.C. § 7602 that clarify that persons described in I.R.C. § 6103(n) and Treas. Reg. § 301.6103(n)-1(a) with whom the IRS or IRS Chief Counsel contracts for services (such as outside economists, engineers, consultants, or attorneys) may receive books, papers, records, or other data summoned by the IRS.

Additionally, the final regulations provide that such contractors may, in the presence of an IRS officer or employee, participate fully in the interview of a person the IRS has summoned as a witness to provide testimony under oath.

In a letter dated May 5, 2016, addressed to the IRS, CEETA respectfully requested that the proposed and temporary regulations (T.D. 9669) issued under section 7602 be withdrawn. CEETA restates this withdrawal request with respect to the final regulations. CEETA believes the final regulations fall short on both policy and procedural grounds, thereby failing to promote a more effective and efficient tax administration. These regulations delegate, outside statutory allowance, inherently governmental functions to private contractors. Allowing contractors to fully participate in summons interviews and receive summoned documents inevitably will result in deferring control of an examination to outside contractors. Undoubtedly, the regulations will lead to longer and less efficient examinations.

Senator Orrin G. Hatch, Chairman of the Senate Committee on Finance, expressed similar concerns when the IRS previously hired a private law firm to assist in the income tax examination of a corporate taxpayer. In a May 13, 2015, letter to IRS Commissioner John Koschkinen, Chairman Hatch noted that the hiring of the private law firm to participate in the examination (1) appeared to violate federal law and the express will of the Congress, (2) removed taxpayer protections by allowing the performance of inherently governmental functions by private contractors, and (3) called into question the IRS's use of its limited resources.

Accordingly, CEETA recommends the withdrawal of these regulatory rules.

II. Revenue Procedure 2016-22

Revenue Procedure (Rev. Proc.) 2016-22 generally provides a description of the administrative appeals process, within the IRS Office of Appeals, for cases docketed in the U.S. Tax Court. CEETA's concern with this revenue procedure is particular to Section 3.03, which provides:

- Chief Counsel will not refer to Appeals any docketed case or issue if IRS Division Counsel or a "higher level of Counsel official" determines that referral is not in the interest of "sound tax administration."

CEETA opposes any general IRS authority to deny a taxpayer the right to administrative resolution of disputes before the Office of Appeals. A taxpayer's right to an independent administrative review of examination results in the Office of Appeals is vital to efficient tax administration. Both taxpayers and the IRS alike seek to achieve mutually agreeable settlements of tax issues in Appeals thereby avoiding litigation. Settlements in Appeals conserve finances, resources, and time of taxpayers, the IRS, and the federal judiciary. In recent years, use of broad IRS discretion has resulted in heightened Congressional oversight, ultimately weakening

taxpayer trust in the agency and calling into question the integrity of the tax administration process. Such broad discretion to deny appeal rights is neither in the interest of the taxpayer nor the IRS. If any limitations were to be placed on a taxpayer's right to Appeals, the limitations should be particular and narrowly defined, preferably by statute. Allowing Counsel the unilateral authority to deny a taxpayer a right to Appeals in the interest of "sound tax administration," a wholly undefined and amorphous term, provides Counsel with any imaginable basis to deny a taxpayer a right to Appeals and force litigation, at the expense of all parties.

CEETA recommends the deletion of Section 3.03 of Rev. Proc. 2016-22.

III. General Comment: Publication of IRS Notices Asserting Future Regulations

CEETA requests that Treasury, reflecting on the overarching purpose of Executive Order 13771 and Executive Order 13789, consider the following scenario and institute necessary oversight and review.

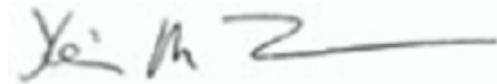
There have been several recent occasions where the IRS has issued "Notice" guidance which provides that the IRS and Treasury "expect" to issue regulations that incorporate the guidance or asserts that the Agency "will amend" existing regulations to incorporate the guidance. See, e.g., Notice 2016-73; Notice 2012-15; Notice 2012-39; Notice 2014-32. In the case of the Notices cited, despite the passage of time - in some cases several years - the regulations have not been issued. The result has been that taxpayers have been obligated to follow the Notice guidance as if it were regulatory law, despite the lack of Administrative Procedure Act compliance in the Notice issuance and lack of the clarity formal regulations would provide. See I.R.C. § 7805(b)(1)(C). The notices oftentimes have an interrorem effect and bring attendant uncertainty. CEETA views this practice, whether intentional or unintentional, as circumvention of the requirements of the Administrative Procedure Act.

Conclusion

CEETA respectfully requests that Treasury, in line with Executive Order 13771 and Executive Order 13789, consider the above-listed regulations and guidance for withdrawal or modification.

Thank you in advance for your consideration of the above matters. On behalf of CEETA, we are happy to participate in any further discussions. Please contact Pam Olson at (202) 414-1401 or Kevin Brown at (202) 346-5051 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Brown", with a long horizontal flourish extending to the right.

Kevin Brown
Leader, Tax Controversy & Regulatory Services
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CC:

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