STATEMENT OF
THE COALITION FOR EFFECTIVE AND EFFICIENT TAX ADMINISTRATION
TO
OVERSIGHT SUBCOMMITTEE OF
THE COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
REFORMING HOW THE IRS RESOLVES TAXPAYER DISPUTES
SEPTEMBER 13, 2017

On behalf of the Coalition for Effective & Efficient Tax Administration ("CEETA"), we respectively submit this statement providing our perspective and recommendations with respect to Treasury regulations and Internal Revenue Service (the "IRS" or "Service") guidance and procedures for the resolution of disputes with taxpayers. We have provided a list of particular regulations and guidance that we believe require the immediate attention of Congress, the Department of the Treasury ("Treasury"), and the Service, as these items test the Service's adherence to its mission of fairness in the enforcement of Federal tax laws.

Additionally, in this statement, CEETA offers its public support for H.R. 3220, *Preserving Taxpayers' Rights Act*, a bipartisan bill introduced on July 13, 2017, by Representatives Jason Smith and Terri Sewell and referred to the Committee on Ways and Means. Enactment of H.R. 3220 will directly address certain concerns with current IRS overreach resulting in unnecessary disputes with taxpayers which is inefficient, time consuming, and expensive for taxpayers and the IRS.

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.[1] CEETA thanks the Committee on Ways and Means Oversight Subcommittee for the opportunity to submit this statement and expresses hope in a continued dialogue within the Subcommittee, and Committee generally.

[1] The coalition of business organizations comprised of: ACT | The App Association; Americans for Tax Reform; Citizens Against Government Waste; Financial Executives International; Information Technology Industry Council; National Association of Manufacturers; National Foreign Trade Council; Retail Industry Leaders Association; Small Business & Entrepreneurship Council; Software Finance and Tax Executives Council; TechNet; and U.S. Chamber of Commerce.

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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 resolution of tax issues in Appeals thereby avoiding litigation. Resolution in Appeals conserves 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 (see below discussion of H.R. 3220). 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.

In past communications with the IRS and Treasury, CEETA recommended the deletion of Section 3.03 of Rev. Proc. 2016-22 and continues to maintain that recommendation.

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

On July 14, 2016, the 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.

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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 maintains this position. 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 documents will result inevitably in deferring control of an examination to outside contractors. Undoubtedly, the regulations will lead to longer, more contentious, and less efficient examinations.

Accordingly, CEETA recommends the withdrawal of these regulations.

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 Koskinen, 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.

Retaining outside lawyers to conduct audits of private taxpayers is unprecedented in the history of the Service. At least one court has stated that it is "troubled" by the practice, noting, "[t]he idea that the IRS can 'farm out' legal assistance to a private law firm is by no means established by prior practice, and this case may lead to further scrutiny by Congress."

H.R. 3220, *Preserving Taxpayers' Rights Acts*

CEETA enthusiastically supports the enactment of H.R. 3220 as a step forward in ensuring efficiency and fairness in the Service's administrative procedures, as the bill directly addresses CEETA's concerns stated with Rev. Proc. 2016-22 and T.D. 9778, and more.

The bill would codify a taxpayer's right to an administrative appeal before the Office of Appeals and limit such right only in particular instances defined within the statute; there would no longer be any discretion for the Service to deny a taxpayer the right to an appeal on the grounds of "sound tax administration." Additionally, the bill appropriately, and statutorily,

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limits the Service's ability to "designate cases for litigation," an authority which allows the Service to deny a taxpayer administrative appeal rights.

The bill also modifies the Service's authority to issue "designated summons." A designated summons issued under I.R.C. § 6503(j) unilaterally suspends the period of limitations on assessment under I.R.C. § 6501, thereby lifting a very crucial protection to taxpayers. Periods of limitations are a cornerstone of statutory law at the Federal and state level. Periods of limitations ensure that the Service, and taxpayers alike, do not indefinitely sit on potential claims; either the Service or taxpayer must act within the statutory period or have the potential claim legally closed to further action. As the suspension of section 6501 is a serious consequence of the Service issuing a designated summons, H.R. 3220 establishes an additional check against this authority. The bill provides that it must be clearly established that the taxpayer "did not reasonably cooperate with reasonable requests by the Secretary for witnesses, documents, meetings, and interviews…." This requirement does not currently exist in section 6503(j). This is a well drafted addition to the authority of the Service to issue a designated summons.

Finally, H.R. 3220 amends I.R.C. § 7602 to expressly nullify the final regulations of T.D. 9778. The bill would amend section 7602 to prevent any person, other than an officer or employee of the IRS or for the sole purpose of serving as an expert, to receive any books, papers, records, or other data obtained in an examination. CEETA commends the drafters of H.R. 3220 for recognizing the final regulations of T.D. 9778 delegated inherently governmental functions to private contractors, and correcting the Service's and Treasury's overreach in issuing the regulations.

Publication of IRS Notices Asserting Future Regulations

Although not specific to dispute resolution procedures amongst the IRS and taxpayers, CEETA requests the Subcommittee consider the following scenario and consider necessary review and oversight.

There have been several recent occasions where the IRS has issued "Notice" guidance which provides that the Service 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

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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

Thank you in advance for your consideration of the above matters. CEETA is happy to participate in any further discussions concerning the above-listed issues or more generally the procedures for resolving disputes between the IRS and taxpayers to minimize unnecessary litigation which is inefficient, time consuming, and expensive for taxpayers and the IRS. Please contact one of the following:

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