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Stephen Whitlock
Deputy Director
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Dear Mr. Whitlock:

We met briefly at the IRS National Public Liaison Meeting on March 17th. I wanted to follow up with you regarding a concept our organization has been discussing in recent meetings with the IRS, which involves the Office of Professional Responsibility. We believe that a strong case exists for establishing a new category or designation of tax professional specializing in employment tax administration.

As background, the NPRC represents businesses – “Reporting Agents” in IRS terminology – that provide human resource-related administrative services to employers, including payroll processing and employment tax payment and filing services. NPRC members serve more than one million employers with a combined total of more than 35 million employees, and process payroll for more than one-third of the private sector workforce. Reporting Agents (RA) transmit about 30 percent of all Federal depository taxes received by the U.S. Treasury, and have long served an important role in our nation's tax collection system as a conduit between employers and the IRS. Reporting Agents improve the efficiency of IRS tax collection and improve tax compliance.

RAs operate under Revenue Procedure 2003-69 and the limited authority granted via Form 8655, Reporting Agent Authorization (RAA). In short, that allows RAs to sign and file clients' employment tax returns, make FTDs, receive deposit frequency information, receive copies of IRS correspondence, and discuss tax return and tax deposit issues with the Service.

Basically, that is sufficient until a FTD penalty is charged. NPRC has been told that requesting an abatement of a penalty constitutes "representation" and that the RAA does not allow RAs to represent their clients before the Service. Through a collaborative effort, the IRS helped the industry by providing an alternative in the current Revenue Procedure and related IRMs. Those documents make it clear that, even though RAs cannot request abatements per se, they can "... provide information that will assist the Service in determining whether it would be appropriate to grant relief from any penalties that may arise ...” In reality, this means that RAs write letters - without directly requesting an abatement - and penalties are removed whenever Tax Examiners (TEs) believe the facts warrant it.

This worked well for some time, when the TEs were allowed to use their own judgment to determine if reasonable cause criteria had been met. However, with the nationwide requirement that the Reasonable Cause Assistant (RCA) be used in all instances, penalties involving third

parties - and particularly RAs - are seldom abated anymore[1]. Once a penalty is sustained, the Taxpayer must go to Penalty Appeals.

The denial letters (852C and 854C) require that the Taxpayer or his authorized representative prepare the appeal. Since Reporting Agents can not represent their clients, they are virtually prohibited from assisting their clients any further - unless the RA has a CPA or Enrolled Agent on staff that can be designated on a Power of Attorney, Form 2848. Although some RAs may happen to employ one or more authorized representatives, they are seldom close enough to client issues to be able to adequately address the penalty situations. NPRC would like to work with the Service towards a solution whereby engaged and knowledgeable RA employees could sign penalty appeal letters and discuss penalty matters with the Service.

We would like to see the OPR develop a Special Enrollment Examination (SEE) limited to employment tax issues. Employees of Reporting Agents, as well as other practitioners who pass this limited SEE, would become Enrolled Agents with practice limited to employment tax matters. In addition to overcoming the penalty appeals barrier, limited practice for RAs would also allow them to efficiently resolve other client problems not covered by the Reporting Agent Authorization, such as resolving entity problems/discrepancies and civil penalties.

In the field of tax administration and tax practice, employment taxes are truly a specialty area. We believe that Reporting Agents and other payroll service providers, who focus exclusively on payroll tax administration as their livelihood, are usually as knowledgeable about employment taxes as Enrolled Agents, CPAs and attorneys, if not more so. Because of this exclusive employment tax focus and specialization, representatives of Reporting Agents are generally not interested in becoming full Enrolled Agents: They typically do not engage in any tax practice outside of employment taxes. Employment tax has become dramatically more complex over the past decade, with each change to the tax laws and regulations and the dramatic expansion of information reporting requirements. In addition, since employers report and remit roughly two-thirds of all tax revenues collected by the IRS, it would be appropriate from a revenue protection perspective to recognize employment tax administrators with more in-depth SEE testing, a limited practice designation, and authority to practice before the IRS.

I discussed this concept briefly with Judy Akin of the NAEA (who is also a member of IRSAC), and she thought that this concept was appropriate and consistent with the general direction of the Service to improve oversight over tax professionals. We would be happy to meet with your office to discuss this concept in more detail. Please call me at (973) 974-5779 if I can be of service in the meantime. Thank you for your consideration.

Sincerely,

Pete Isberg
National Payroll Reporting Consortium

[1] The Office of Penalty & Interest states that the Campus supervisors can grant permission for TEs to override the RCA determinations. However, realistically, this never happens. Reporting Agents have been told by CSRs and TEs countless times that they are not allowed to override the RCA and that the RA will have to take the matter to Appeals.