

**Oral Statement of Lonnie Gary, EA, USTCP
Chair, Government Relations Committee
National Association of Enrolled Agents
before the Internal Revenue Service Oversight Board
February 28, 2012**

Good afternoon to the chair, to Mr. Eck, and to the rest of the IRS Oversight Board. I am pleased to be here on behalf of America's tax experts, enrolled agents, and on behalf of NAEA.

The topic we address today—essentially, the costs and benefits of correspondence audits—is a significant one. The Service's reliance upon correspondence audits, as Mr. Eck suggested in his opening comments, is not new. What is new is the volume of correspondence audits, which has exploded within the past five or so years, and the resources IRS is able to bring to bear on its overall enforcement efforts.

We EAs are a practical group and my comments reflect that. Given our goal today is to engage in a round robin discussion, I intend to limit my remarks to three areas:

- two general examples of correspondence audits;
- our general concerns with correspondence audits; and,
- possible actions IRS could take to address our concerns.

I offer the correspondence examination examples in an attempt to frame this conversation. To be clear, EAs believe there is a place in the Service's enforcement toolbox for correspondence audits. Our extensive frontline experience with taxpayers, however, provides many instances in which they are used inappropriately.

Often correspondence audits are completely straightforward. The Service requests confirmation of a simple Schedule A line item, for instance property tax or charitable contributions. The correspondence audit asks the taxpayer to provide documentation supporting the property tax deduction or perhaps for receipts on charitable contributions over \$250. Complying with such requests is fairly simple. While many taxpayers successfully manage this process themselves, we enrolled agents represent many others.

On the other hand, some correspondence audits are anything but straightforward. For instance, a colleague of mine recently recounted a correspondence audit that required eight months to resolve. This Schedule A audit addressed Form 2106 (Non-

reimbursed Employee Expenses) totaling some \$31k on a return with an AGI of \$50k—eyebrow raising to be sure. The taxpayer, against his EA's advice, attempted to manage the response. He wilted under the pressure and came back to my colleague after the initial exam report denied the entire Form 2106 deductions.

Ultimately the EA constructed not one, not two, but three large mailings, each weighing a few pounds, which she sent to Ogden. During this process, she made several calls to Ogden, which were frustrated by the fact that the staff in Ogden did not have direct extensions and the EA could not leave a direct, detailed message. Further frustrating the resolution, the examiners were to call within 48 hours, but she never had any idea when they would call—and if she hadn't known to specifically authorize them to leave messages, she would never have known that she had missed a call.

Cutting to the chase: the audit closed as n/c and the client received a bill for 18 hours of EA time (which, as often happens in this business, did not include all the hours my colleague worked). The taxpayer ended up forking over somewhere between \$3k and \$4k and IRS staff spent untold hours on an open audit. My colleague believes this audit could have been managed in a two-hour office audit and estimates billable hours would have been halved.

I have provided only one example of a correspondence exam gone wild, to borrow a phrase that has had some popularity in recent years. I could sit here and recount many more. I suspect my colleagues here could as well.

I use these illustrations to emphasize the fact that we believe correspondence exams have a place in the Service's compliance arsenal. At the same time, we are concerned about how the Service chooses its compliance tool. At the risk of stretching the analogy, when the only tool you have is a hammer, everything looks like a nail.

To that end, we raise the following high-level concerns:

- 1) The scope of some correspondence exams is far too wide and focused on issues that are difficult to manage by mail. We have seen correspondence exam requests for supporting documents for fairly hefty Schedules C, Schedules E, Schedules F, and Forms 2106.
- 2) For a variety of reasons, it can be too difficult to arrange for correspondence exams to be moved to the field.
- 3) The fact that a single person is not assigned to a correspondence audit complicates swift resolution.
- 4) Communicating with the correspondence audit staff on more complex issues is difficult because the staff does not have appropriate telephone and e-mail access.

- 5) IRS far too often loses or misfiles documents that representatives submit, which causes tremendous delays and often inappropriate enforcement action (e.g., 90-day letters).

We understand and in fact are sympathetic that the agency finds itself in a resource constrained environment in which the total volume of returns over which it must say grace continues to grow. IRS officials are constantly asked to do more with less. One of the ways to achieve this goal is to refocus and overhaul the correspondence examination program. With that in mind, we make a few common sense suggestions:

- 1) Assign a single person to work each correspondence examination, if not in all cases then at least for more complex issues.
- 2) Make sure the person assigned to the correspondence exam is properly trained (e.g., understands the issues attendant to farm returns in the case of Schedules F and rental property in the case of Schedules E).
- 3) Require the examiner to review incoming material. My colleagues generally strive to produce documentation that is well presented and generously annotated. Sending hastily considered notices of deficiency despite the fact that the issue is clearly explained unnecessarily increases frustration as well as expense and time for both IRS and the taxpayer.
- 4) Provide the IRS staff with fundamental tools, namely voice mail and e-mail, and find a way to allow representatives to scan information and submit it electronically.
- 5) Manage incoming correspondence. We should never hear IRS has a Form 2848 but cannot locate the 3-inch binder of supporting documents that accompanied the power of attorney.

To close, we believe compliance audits, when properly focused and managed are a wise use of IRS' limited resources and allow for efficient and effective resolution of potential compliance issues. The key to success in this environment, however, is creating an environment in which the proper issues are selected for correspondence audits and in which taxpayers are assured that well-trained and well-supported IRS staff is able to manage the inevitable incoming correspondence.

I thank you for the opportunity to address the Oversight Board and for your interest in this issue. We look forward to assisting the Board as well as IRS leadership as you continue your efforts to improve America's tax administration system.