

**Statement of Lonnie Gary, EA, USTCP
Chair, Government Relations Committee
National Association of Enrolled Agents
before the Internal Revenue Service Oversight Board
Public Forum
May 1, 2013**

Good morning Mr. Cherecwich and Mr. Tobias. I am pleased to be here on behalf of NAEA, which represents enrolled agents, America's tax experts.

First, let me thank you, Mr. Tobias, for continuing the board's efforts to look over the horizon—to consider both opportunities and threats our tax administrators may be required to address. Former IRS Commissioner Doug Shulman challenged his senior staff during the last year of his tenure to consider a state of the art, real time tax system. We shared our thoughts with him during a December 2011 testimony at IRS' headquarters and appreciate the opportunity to continue the discussion.

As we indicated then, checking tax return accuracy in real time is conceptually appealing. Enrolled agents are supportive of agency efforts to reduce notices and to increase efficiency, and a real time system as Commissioner Shulman envisioned it would accomplish both.

We EAs are a practical group and my comments today reflect that. Given that our goal today is to engage in a high level discussion of real time processing, I am going to focus my remarks on a few of the many questions such a significant change raises for EAs, taxpayers and tax administrators.

We are coming off of one of the most challenging filing seasons I've witnessed in my many years as a tax professional. While the ever increasing complexity and instability of the tax code provides the assurance that even a "good" filing season will prove challenging, the unprecedented lateness of the American Taxpayer Relief Act of 2012 made planning impossible for many Americans and also compressed a filing season that is already all too brief.

With this frame, I start by stating the obvious: we simply cannot move to a real time system at the cost of further truncating the filing season.

Real time document matching is infeasible today because IRS does not receive all the information return data in time to perform matching during filing season. The question

before us is how the Service will acquire the information return data in a timely fashion. Something will have to give. Either the filing deadline will need to shift later or the Service will have to require an aggressive due date for the information return data that will be matched. Each of these provides its own challenge—on one hand, the April 15th filing date is deeply entrenched in the American psyche while on the other hand information document providers have struggled to meet the current deadlines.

Moving on, we'll assume the Service has timely information return data and appropriate programming to perform real time matching. The Service must determine what information it plans to share *on a pre-filing basis*, as well as when and how it will share that information.

As tax practitioners, would we have access to the same information IRS is using in its matching program, and if so, how? The most obvious approach is to use e-Services, but sharing this data currently requires an executed power of attorney. Does the Service envision practitioners holding valid powers of attorney for each person whose return he/she prepares? Or does the Service envision a special, limited use "mini" PoA?

Apropos of questions of what IRS would do with the information return data it receives in real time, we believe a return-free filing program, which would be tempting to tax administrators and legislators both, fails to receive the public discussion it merits. A mere two weeks ago we saw The Autofill Act of 2013 filed in the U.S. House—and at a time the agency would not be able to "autofill" a tax return in a timely fashion!

IRS is charged with informing, educating, and assisting taxpayers as well as with the significant responsibility of ensuring enforcement. How could the agency reconcile those duties with proposing the actual content of an individual's tax return? Leaving aside that fundamental issue, what would such a plan mean for voluntary compliance? As an example, the Service within the last month or so released a Tax Tip entitled "Four Facts About Bartering." How on earth does the agency's position on bartering—namely that bartering is taxable income—square up with returns it has populated for taxpayers, which would not include bartering income? I'm sure we could all imagine other compliance troubles the agency would invite by preparing returns for taxpayers.

Given our close work with taxpayers of all stripes, we cannot help but be concerned by the question of what happens to the returns that do not match. Commissioner Shulman's Real Time Tax System Initiative document cites reduced taxpayer burden as a key long-term benefit. We wonder whether a more accurate description is that a real time system shifts tens or hundreds of thousands of contacts (usually by CP 2000 notices) from 12 to 18 months after the filing of the return to the very beginning of the filing process. The decisions the agency makes about how to address mismatches are

critical to ensure that these filing season mismatch contacts are not in fact more burdensome than the CP 2000 notices IRS is trying to replace.

Before I close, I suggest it is helpful to picture an actual real time tax transaction. Assume a taxpayer's e-filed Form 1040 fails to match the information return documents IRS is using. What happens then? Will IRS reject what is otherwise a perfectly valid return? Will IRS "soft reject" the return and give the filer a short window in which to change the return before processing it as filed? In either event, how much detail will IRS provide? Both timing and content are important. Throughout e-file's long history IRS has had notoriously opaque reject codes, so there is some basis for concern even on the fundamental structure of a reject message.

Once the taxpayer and preparer are aware of a problem, then what? A simple transcription error could be cleared up immediately. A missing or inaccurate information return could be more problematic and require a more complex interaction with the agency. In either case, we wonder whether correcting a reject would require the taxpayer to re-sign the return and suggest that re-signing could be a significant burden on practitioner and taxpayer alike.

Real time processing is going to require real time access to IRS data and, particularly if IRS plans to reject non-matching returns, real time solutions. In other words, a real time processing system that is sensitive to the needs of taxpayers and tax professionals requires real time customer service.

The significant challenge is that return volumes are nonlinear, with peaks in early February and mid-April. AUR work is largely performed outside the filing season, allowing at least theoretically for IRS to service the calls and letters that result from CP 2000 notices. If only three percent of returns on IRS' peak filing day fail to match IRP documents, how will IRS manage any significant volume of calls? Using this math, on peak days the Service could easily reject 100,000+ returns merely because of IRP mismatches. Increased call volumes would strain the Service's current capabilities and place an added burden on tax practitioners at a time they are working at full capacity.

Perhaps the Service would consider a phased-in approach to real time filing. In December 2011 the agency revealed that four information returns¹ account for some 70 percent of AUR assessments and that 50 percent of all Forms W-2 are issued by 56 payors. This approach may create a universe that is easier to manage. A partial approach does not answer many fundamental questions, including the impact of shepherding taxpayers with rejected returns to the office of a typical tax professional, who largely works CP 2000 notices outside of peak season.

¹ Forms 1099-MISC, 1099-B, 1099-R and W-2

Notwithstanding the laundry list of practical questions, we support changes that make the tax administration system more efficient and less burdensome on all stakeholders. Ultimately, though, the details of the program matter. The Service must balance the costs of the current, though admittedly imperfect system, against the costs and benefits of a real time processing system.

We suggest that the IRS Oversight Board consider three stakeholders as IRS explores real time filing options: taxpayers, tax professionals, and tax administrators. A change of the magnitude under discussion today will impose costs (and, we hope, benefits) on all three.

We thank you for taking the first step by inviting NAEA and our co-panelists to this public forum.