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MEMORANDUM

To: Clients & Friends
From: Stanley C. Ruchelman & Armin Gray
Re: I.R.S. Imposes Strict Response Times to I.D.R.s for Large Business and International Taxpayers
Date: November 5, 2013

On November 4, 2013, the Large Business and International Division (L.B.&I.) issued a new directive (“[Directive](#)”) providing that an agent generally has no discretion in respect of deadlines for responses to information document requests (I.D.R.s). Due to this Directive, taxpayers subject to this Directive are encouraged not to procrastinate in responding to an I.D.R. The new directive is effective beginning January 2, 2014.

Background

The Large Business and International (L.B.&I.) Division serves corporations, subchapter S corporations, and partnerships with assets greater than \$10 million, and it also performs various international functions including examinations of individuals and businesses with international tax issues.

When under an audit, the Internal Revenue Service (I.R.S.) may issue an I.D.R. The I.D.R. requests specific information from the taxpayer in respect of tax issues identified by the I.R.S.

On November 4, 2013, the L.B.&I. released a new directive on I.D.R. enforcement processes. Under this Directive, strict deadlines are enforced in respect of the time required to respond by the taxpayer.

New Process

In general, the new process is as follows:

Step 1. Issue I.D.R.

To issue an I.D.R., the examiner or specialist must adhere to the following guidelines:

1. Discuss the issue related to the I.D.R. with the taxpayer.
2. Discuss how the information requested is related to the issue under consideration and why it is necessary.
3. After this consultation with the taxpayer, determine what information will ultimately be requested in the I.D.R.
4. Ensure the I.D.R. clearly states the issue that is being considered and that the I.D.R. only requests information relevant to the stated issue.
5. Prepare one I.D.R. for each issue.
6. Utilize numbers or letters on the I.D.R. for clarity.
7. Ensure that the I.D.R. is written using clear and concise language.
8. Ensure that the I.D.R. is customized to the taxpayer or industry.
9. Provide a draft of the I.D.R. and discuss its contents with the taxpayer.
10. After this discussion is complete, determine with the taxpayer a reasonable timeframe for a response to the I.D.R.
11. If agreement on a response date cannot be reached, set a reasonable response date for the I.D.R.
12. Set a date by which the I.D.R. will be reviewed and a response provided to the taxpayer on whether the information received satisfies the I.D.R. This date should be noted on the I.D.R.

If the information requested in the I.D.R. is not received by the response date, the examiner or specialist will proceed to step 2.

Step 2. I.D.R. Enforcement Process

If information requested in an I.D.R. that is issued in accordance with the first step is not received by the I.D.R. response date, the examiner or specialist must adhere to the following guidelines, which has three graduated steps: (1) a Delinquency Notice; (2) a Pre-Summons Letter; and (3) a Summons.

Delinquency Notice (Letter 5077)

If a taxpayer does not provide a complete response to an I.D.R. by the response date, the examiner or specialist will complete the first phase of the enforcement process, the Delinquency Notice,¹ by following the procedures described below:

1. Discuss with the appropriate personnel from both the I.R.S. and the taxpayer the I.D.R. and the I.D.R. response to identify what information is missing.
2. Discuss the Delinquency Notice with the taxpayer. During this discussion, ensure that the taxpayer understands the next steps in the enforcement process if the information requested in the I.D.R. is not provided by the response date established in the Delinquency Notice.
3. Issue the Delinquency Notice to the taxpayer within 10 calendar days of the I.D.R. response date. The Delinquency Notice should include a response date that is generally no more than 15 calendar days from the date of the Delinquency Notice unless specifically approved by a higher designated personnel.

Pre-Summons Letter (Letter 5078)

If a taxpayer does not provide a complete response to an I.D.R. by the response date in the Delinquency Notice, the examiner or specialist will complete the next phase of the enforcement process, the Pre-Summons Letter, by following the procedures described below:

1. Discuss the lack of response to the Delinquency Notice with the appropriate supervisor and prepare the Pre-Summons Letter.
2. The appropriate supervisor will discuss the Pre-Summons Letter with the taxpayer. During this discussion, ensure that the taxpayer understands the next steps in the enforcement

¹ This should not be confused with the statutory notice of deficiency, the so-called 90 day letter.

process if the information requested in the I.D.R. is not provided by the response date established in the Pre-Summons Letter.

3. Issue a Pre-Summons Letter. This must be done as quickly as possible but generally no later than 14 calendar days after the due date of the Delinquency Notice.
4. Include a response date in the Pre-Summons Letter that is generally 10 calendar days from date of Pre-Summons letter unless otherwise approved by a higher designated personnel.

Summons

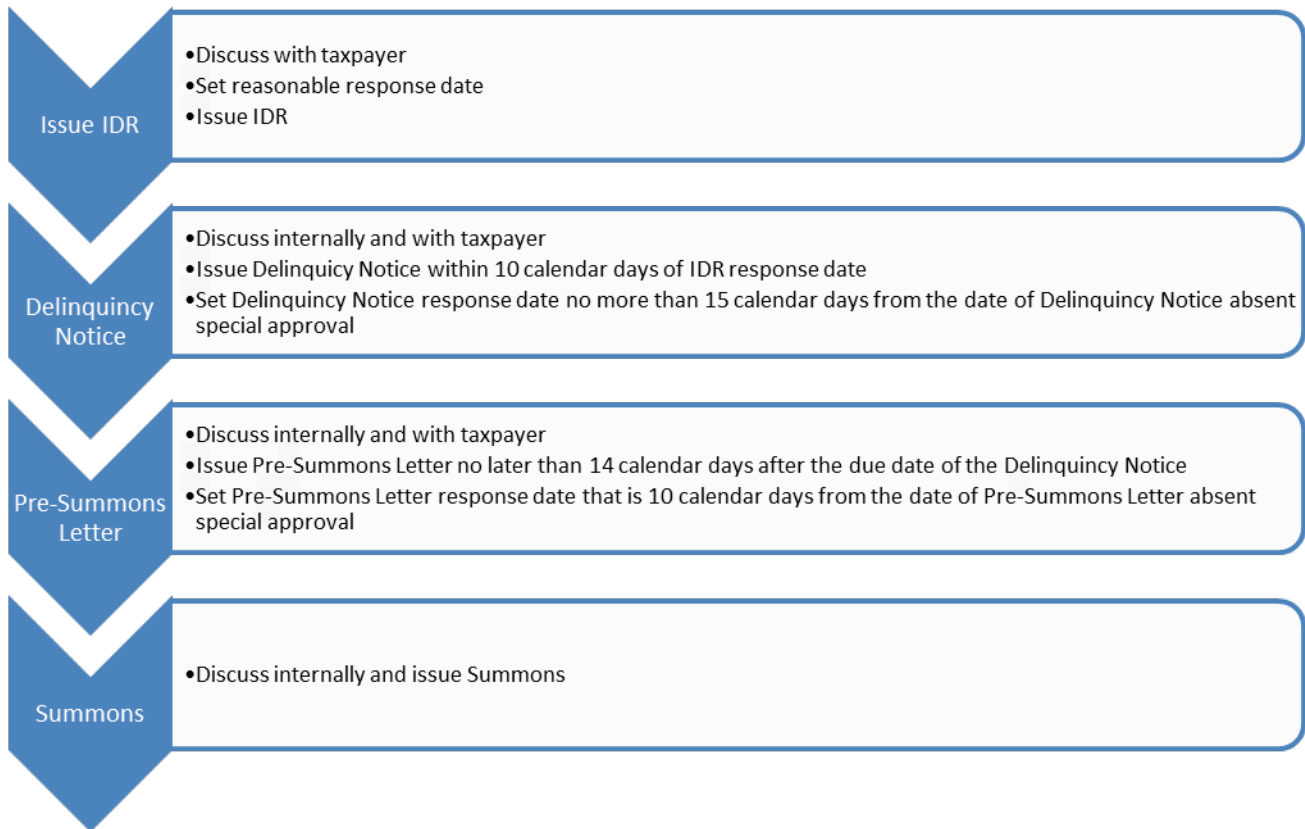
If a taxpayer does not provide a complete response to an I.D.R. by the response date in the Pre-Summons Letter, the examiner or specialist will complete the next phase of the enforcement process, which is to issue a Summons.

Effective Date

Pursuant to this Directive, the Directive is effective beginning January 2, 2014. As of that date, the process applies only to I.D.R.s that have been issued in accordance with the above guidelines in step 1. If an I.D.R. does not meet these requirements, it must be reissued to conform to the new requirements including a new response date, at which time the enforcement procedures described in step 2 will apply to that I.D.R. To ensure a smooth transition, the Directive provides that Delinquency Notices should not be issued prior to February 3, 2014.

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I.D.R. Enforcement Process



Example

On **January 2, 2014**, after discussions with the taxpayer, the examiner issues an I.D.R. The I.D.R. states that the taxpayer has until **February 3, 2014** to respond.

If the taxpayer disregards the I.D.R. and does not respond by or does not provide a full response to the I.D.R. by **February 3, 2014**, the examiner will issue a Delinquency Notice within 10 days thereafter. The longest deadline permissible, absent special approval, to respond to the Delinquency Notice is 15 calendar days.

Assume, on **February 13, 2014**, the examiner issues the Delinquency Notice with a response date that is 15 days from the date of the Delinquency Notice, or **February 28, 2014**. If the taxpayer disregards the Delinquency Notice deadline, the examiner will issue a Pre-Summons Letter no later than 14 calendar days from the date of the Delinquency Notice deadline.

Assume, on **March 13, 2014**, the examiner issues a Pre-Summons Letter. The deadline for the Pre-Summons Letter is 10 days from that date, or **March 23, 2014**. If the taxpayer does not respond to that date, a Summons will be issued.

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Contacts

If you have any questions about this alert, you may contact the principal of our law firm, Stanley C. Ruchelman, or the author of this client alert, Armin Gray, whose practice includes international tax matters.

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We provide a wide range of tax planning and legal services for foreign companies operating in the U.S., foreign financial institutions operating in the U.S. through branches, and U.S. companies and financial institutions operating abroad. The core practice of the firm includes tax planning for cross-border transactions. This involves corporate tax advice under Subchapter C of the Internal Revenue Code, advice on transfer pricing matters, and representation before the I.R.S. The private client group of the firm also advises clients on matters related to domestic and international estate planning, charitable planned giving, trust and estate administration, and executive compensation. The tax practice is supported by our corporate group, which provides legal representation in mergers, licenses, asset acquisitions, corporate reorganizations, acquisition of real property, and estate and trust matters. The firm advises corporate tax departments on management issues arising under the Sarbanes-Oxley Act. We have offices in New York City and Toronto, Canada. More information can be found at www.ruchelaw.com.

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