TESTIMONY OF TROY K. LEWIS, CPA
BEFORE THE SENATE FINANCE COMMITTEE
U.S. SENATE
HEARING ON
TAX FILING SEASON: IMPROVING THE TAXPAYER EXPERIENCE
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Chairman Baucus, Ranking Member Hatch, and members of the Senate Finance Committee ("Committee"); I appreciate this opportunity to address the topic of improving the taxpayer experience. My name is Troy Lewis. I am a Certified Public Accountant ("CPA") and Vice President with Heritage Bank a small community bank in St. George, Utah. I am also the sole proprietor of a small CPA firm, Lewis & Associates, CPAs, LLC based in Draper, Utah, as well as an adjunct professor of accounting and taxation at Brigham Young University in Provo, Utah. I also currently serve as a member of the American Institute of Certified Public Accountants' Tax Executive Committee. My testimony today is based primarily on my experience in performing tax-related work for small businesses, individuals and other tax professionals through my current role with Heritage Bank, my current CPA firm practice, my service on the AICPA's Tax Executive Committee, as well as my previous professional positions with national accounting firms.

I believe the taxpayer experience can be improved through Congressional oversight and action, administrative actions and guidance as well as overall improved communication. In this context, my comments focus on the following areas of concern and opportunity for improvement: (1) tax reform; (2) correspondence examinations; (3) due dates; and (4) basis reporting.

1. TAX REFORM

The Internal Revenue Code ("Code"), Treasury Regulations, and other administrative pronouncements impose too many compliance and filing burdens on small businesses. Accordingly, to improve the taxpayer experience, tax reform should encompass simplification proposals designed to alleviate the complexity and burdens placed on small businesses. Many small businesses are organized as entities other than C corporations. Tax reform therefore cannot merely involve changes to corporate tax rates or other tax provisions targeting C corporations if the desired impact is to help all small businesses overcome the burdens and complexities of tax compliance. These improvements must target other key areas.

There are a number of areas in the Code that impose substantial burdens on small businesses and individuals, including "pass-through entities" such as partnerships and S corporations. Simplification is needed in areas such as depreciation, the Alternative Minimum Tax ("AMT"), certain partnership tax provisions, education deductions and credits, retirement plans and small business provisions that exclude non-corporate entities. A key point that would also significantly improve the taxpayer experience would be minimizing the overall uncertainty throughout the Code and expanding provisions intended to help small businesses and individuals specifically focusing on non-corporate entities.

Depreciation

Depreciation is an area that should be simplified in order to improve the taxpayer experience.[1] The depreciation methods required by the Code are different than those used for financial accounting. There are differences in depreciation methods between financial and tax accounting methods based primarily upon the different conventions, recovery period and different rules based upon when the asset was purchased. In recent years, there have also been provisions added to provide for "bonus" depreciation and increased recovery amounts under Code Section 179. An asset bought during 2012 might have several different calculated basis recovery amounts depending upon whether or not it was purchased new, when it was purchased, the amount of taxable income of the taxpayer for the tax year and the amount and the timing of other assets that will be purchased by the taxpayer during the year. Taxpayers therefore don't know what to expect in terms of basis recovery on an asset purchased in January 2012 until at least December 2012. This delay produces uncertainty and distrust in the tax system. Planning for the net cash flow from the purchase of an asset in such a case is difficult at best.

There are several depreciation "books" often maintained by a business on the same exact assets. It is not uncommon to find depreciation records being maintained for financial accounting, regular tax, AMT and then depending upon the states in which the business operates a whole new set of tax books using state specific modified rules. In the end, the purpose of the depreciation rules is to provide a consistent approach for the recovery of cost basis for assets used in a trade or business. However, because of the various depreciation books required to be maintained, the whole area of depreciation has led to excessive complexities. The taxpayer's experience will be improved if Congress will work to modify the depreciation process so that the redundancy of multiple calculations to calculate the cost basis for the same asset potentially six or seven different ways (if multiple states are involved) is reduced.

In recent years, Congress has acted in some limited form to reduce such complexity by increasing the Code Section 179 limits and expanding the definition of qualified Section 179 property to include qualified leasehold property. Such action did reduce the administrative burdens placed on small business. I commend Congress for such actions. The small business owner needs more of this type of solution in the future to reduce complexity.

Depreciation rules should be simplified to provide for a more basic approach with fewer alternative methods which would serve to not only reduce confusion and unintended consequences but also to permit taxpayers to better plan for their capital needs in the future.

Alternative Minimum Tax

Small businesses, including those operating as pass-through entities, are increasingly more vulnerable to being subject to AMT. The AMT was created to ensure that all taxpayers pay a

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[1] See *Background and Present Law Relating to Cost Recovery and Domestic Production Activities* prepared by the Staff of the Joint Committee on Taxation for a Public Hearing before the Senate Committee on Finance on March 6, 2012, JCX-19-12.

minimum amount of tax on their economic income regardless of the regular income tax laws. The AMT is one of the tax law's most complex and least understood components.[2]

As you know, the AMT is a separate and distinct tax regime from the "regular" income tax that requires the taxpayer to make a second, but parallel computation of their taxable income. This second parallel system is applicable to not only large businesses but also small businesses operating in various entity forms.

Small businesses must maintain complicated annual records to be used in computing the AMT as well as any resulting credits that may be utilized in the future to reduce the taxpayer's regular tax liability. This second calculation often produces complications and unforeseen adjustments that produce unanticipated results for small business owners. The calculation related to the AMT credit alone can be difficult as the taxpayer is forced to separate AMT differences between adjustment and preference items and to recalculate the AMT for a given year to determine the extent the AMT is as a result of any one particular item.

The number of taxpayers facing potential AMT liability is expanding significantly. Middle-class taxpayers with basic itemized deductions can be subject to the AMT for no other set of reasons other than the fact that they pay real estate taxes on their home, pay income taxes to a state and have several dependent children.

Today, Congress continues to extend the AMT exemption amount or the so-called AMT patch on a year by year basis in order to provide individual taxpayer inflation–adjusted relief from the AMT. This process produces annual uncertainty for middle-class taxpayers. The number of taxpayers currently paying some amount of AMT is at a historical high. Without the added annual AMT patch the amount of impacted middle-class taxpayers would clearly rise significantly.

Due to the increasing AMT complexity, the AMT's impact on unintended taxpayers, and AMT compliance problems, I suggest Congress strongly consider repealing the individual AMT altogether. However, I recognize that simply eliminating the AMT would generate a large loss of tax revenue that would accompany such a move. AMT repeal is perhaps best accomplished as part of an entire Code reformation project. In the end, eliminating the AMT in exchange for modifying and simplifying some existing regular tax provisions will work to simplify the Code and to therefore increase the confidence in the tax system by many middle-class taxpayers.

While the objectives of the AMT are well known and perhaps supportable, it is my opinion that the burdens on small businesses and individuals can be reduced without unduly compromising revenue generation objectives.

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[2] See *Present Law and Background Relating to the Individual Alternative Minimum Tax* prepared by the Staff of the Joint Committee on Taxation for a Public Hearing before the Senate Committee on Finance on June 27, 2007, JCX-38-07.

Certain Partnership Tax Provisions

Partnership tax rules are among some of the most complex in the Code. Yet because of the federal tax law's flexibility in utilizing partnerships, these partnership entities still remain a very popular choose among small businesses today. Many small businesses are organized in such a way as to permit them to be taxed as partnerships.

However, the tax implications of various transactions for partners in a partnership are often very different from shareholders in C or S corporations, or even sole proprietorships. The result is that there can be inequality of taxation outcomes strictly based upon entity type even when there appears to be very little policy reason for such a distinction.

Today there exist two particular partnership related issues that are in need of improvement:

First, in most cases, a partner in a partnership is not allowed to receive a W-2 for the services he or she may provide to a partnership during the year but rather such earnings are taxed as self-employed compensation through allocations of earnings. This treatment is inconsistent with how a similarly-situated shareholder would be taxed related to their performing services for an S or C corporation. In the end, the same amount of payroll taxes will have been paid to the government but because of the entity differences, the partner/owner is treated differently. This particular payroll issue has caused tremendous confusion and misinformation within the tax preparer community. Compliance with and respect for the laws governing this partner/self-employment tax issue is at a low point. This portion of the law remains somewhat unsettled based partially upon Congressional action and inaction[3] and the IRS current stance.[4] As a result, there is a wide degree of interpretation of the law based primarily upon the lack of Congressional action. I would urge Congress to act to resolve this discrepancy. My sense is that the Social Security Trust Fund is collecting far less in taxes than it ought to collect in this area simply because the law has not been made clear enough to taxpayers and their tax advisors. Resolving this issue will also not only stabilize the payroll collection for partners but it could also potentially resolve for the need for unnecessary controversy between taxpayers and the IRS. Most importantly, allowing W-2 treatment for services would also enhance the taxpayer experience in that there would be certainty.

Second, partners that participate in the trade or business of their respective partnerships should be assessed self-employment taxes based upon the fair value of their services. Likewise, partners should be allowed to separate a return on their invested capital from their distributive share attributable to their service. Congress should consider adopting legislation that would permit such separations in interest so that the amount of self-employment income assessed to each partner would be more certain. By adopting legislation that permits such a distinction, Congress would help to resolve present-day confusion and misinformation in this area as well as provide for a more uniform and predictable outcome between entity types.

[3] See Section 935 of the Taxpayer Relief Act of 1997
[4] Proposed Treasury Regulation Section 1.1402(a)-2

Education Deductions and Credits

By my last count there are currently two income tax credits, four income tax deductions and two different and distinct types of educational savings plans designed to accomplish and encourage taxpayers towards the same basic goal: that of encouraging Americans to seek out higher education. Each one of these ideals is fundamentally sound in its approach. Each serves a purpose. Over time these various provisions has been adopted on a year by year approach. Looking back, it is very easy to see why we have collected such an eclectic group of common-minded provisions. But each different provision has its own separate limitations, phase-outs, maximum and minimums, and overall applicability requirements. This multi-choice experience confuses taxpayers and their advisors and often can lead to different "best" answers on a year by year basis based upon a taxpayer's individual situation.

In my view, the time has now come to simplify and reduce such provisions. We don't need all of these different provisions to motivate and encourage the citizens of this country to seek out higher education. I urge Congress to combine and merge several of these provisions such that the number of available choices for taxpayers will be limited to a brief conversation with their tax advisor instead of today's process of making various assumptions to predict the "right" potential educational option for a taxpayer.

Numerous Retirement Plans

There are too many options for retirement plans that businesses need to consider before deciding which is appropriate for them. These options include a SEP, SIMPLE, SARSEP, 401(k), profit sharing plan, defined benefit plan, money purchase plan, ESOP, SIMPLE 401(k), Solo 401(k), among others.[5] Some plans are only available to employers with a certain number of employees while other plans require mandatory contributions and higher administrative burdens. Some of the administrative burdens would include annual return filing, discrimination testing, etc. To determine which plan is right for their business, owners must often consider their cash flows, projected profitability, anticipated growth of the work force, and expectations by their employees and co-owners. What plan type is right for a small business owner might change from year to year based upon the operational changes of the business.

It appears that the diversity of plans came about because of Congress' intent to create plans for small business owners that were easier to manage, allowed for more flexibility in funding, and created choices for different sized entities. Over the years, however, as new and existing plans have been added, modified, adjusted, expanded and limited, the complexity associated with the general good intent of the provisions has risen dramatically. We are now at a point where the choices can be overwhelming and many are too complex or costly for the small business owner to be able to benefit. I urge Congress to act to phase out and merge several of these plans into just a few simple choices whereby Americans and their employers would receive more encouragement to save for retirement in a tax-deferred, simple and uncomplicated manner. The status-quo is too unnecessarily complicated.

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[5] See *Present Law and Background Relating to the Tax Treatment of Retirement Savings*, Prepared by the Staff of the Joint Committee on Taxation, for a Public Hearing before the Senate Finance Committee on September 15, 2011.

Small Business Provisions that Exclude Non-Corporate Entities

Some tax provisions that have been passed by Congress are applicable only to businesses operated in C corporation form. For example, laws designed to allow a certain percent of gain recognized on the sale of the certain stock of a business under Code Section 1202 or a potential deferral from the sale of a business under Code Section 1045 (Qualified Small Business Stock) are applicable only to businesses and their owners operating in C Corporation form. There appears to be little policy reason why such benefits could not be extended to businesses operated for instance, in partnership form.

Under Code Section 118, C corporations are allowed to receive contributions to their capital on a tax-free basis from non-owners under certain limited situations. This provision is often utilized to allow municipalities to partially fund community improvement projects with for-profit entities in a way that does not needlessly generate taxable income to the for-profit entity. However, Code Section 118 does not apply to businesses organized and conducted as partnerships. A large percent of new businesses being formed today are done so as federal taxable partnerships. Thus, a contribution from the local municipality to an entity to construct the same local improvement project might be taxable as gross income to one taxpayer operated as a partnership and non-taxable to the taxpayer operating as a C corporation. When two similarly situated taxpayers in the same business find themselves in a very different tax positions relative to a contract with a municipality for no reason other than entity choice, taxpayer confidence in the taxing system, and their sense of fairness, is weakened.

As future modifications to the Code are made or as new provisions are added, I would urge Congress to include in the dialog the concept of entity choice and current business practices. I believe that a recognition that many small businesses today are formed in the pass-through entity form will lead Congress to design incentives and Code modifications to better allow the majority of new businesses to take full advantage of well intentioned Congressional changes.

Uncertainty of Tax Law

Although the IRS attempts to educate taxpayers regarding new tax laws, which are passed after the tax year has commenced, taxpayers are often unable to or often fail to take full advantage of the intended benefits. Even in today's electronic communication age, business owners often find themselves unaware of tax law changes until after the close of the year when they meet with their tax professional to prepare their income tax return. Thus, most tax motivating provisions in the Code which involve immediate applicability and are effective for only a short period of time often go unnoticed and unappreciated by many taxpayers. This failure of the taxpayer to be notified is a shortcoming of the system, and, in my view, substantially reduces the effectiveness of the laws which Congress has enacted for various short-term objectives.

In 1788 in the *Federalist 62*, James Madison wrote:

> In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit

> of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

During the last few years there has been a fair amount of tax legislation designed to stimulate the economy. Small businesses can be overwhelmed by the barrage of changes to the tax laws and regulations which occur late in the tax year and leave many taxpayers with neither the time nor the ability to evaluate properly the impact of the changes on their businesses. For example, during 2011, a taxpayer, needed to choose the correct and most beneficial depreciation method from a menu of choices, which necessitated cumbersome alternative computations. Taxpayers buying new equipment in 2011 had to evaluate their cost basis recovery options by potentially selecting one of several ways to recover the cost of the equipment with each having its own set of qualifications, criteria for applicability and speed of recovery. All of these computations related to the same basic objective: basis recovery of the purchase of an asset.

Actions regarding the use of temporary provisions have also created uncertainty. While some measures, such as those designed for economic stimulus, may be appropriate for temporary and sporadic use, temporary tax provisions, including many incentive provisions, have become far too common.[6] The uncertainty associated with this annual list of extenders weakens the confidence in the tax system by the taxpayer.

These somewhat frequent changes to the Code also work to lessen the confidence of the general public in the United States taxation system overall. The initial First-Time Homebuyer Credit is an example of a stimulus concept that was somewhat well received initially but in the end may have been tarnished somewhat by the very taxpayers that availed themselves of the tax credit. The home builder and real estate community did a reasonable job of educating the general public of this provision. In Heritage Bank's lending area we saw some increased buying activity as a result of this credit. The credit provided first time homebuyers with an income tax credit in the year of the initial purchase of their residence with the mandate that such tax benefit be recaptured back into subsequent succeeding tax returns over the next fifteen years. Then after the applicability of the initial credit expired, an extension/modification of the income tax credit was provided that not only raised the amount of the potential credit but also waived the recapture of any of the prior credit benefit. Thus, two first-time homebuyers living side by side separated only by a few months in the closing of their respective homes found themselves in completely different tax situations. Make no mistake that the first homeowner that availed themselves on the initial credit received exactly what they bargained for but such cannot hide the fact that once the first buyer realized that but for a few months their situation was far less favorable to that of their neighbor, the first buyer was disappointed and their level of reliance and trust in the tax system was shaken.

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[6] See *List of Expiring Federal Tax Provisions 2011-2012*, Prepared by the Staff of the Joint Committee on Taxation, January 6, 2012, JCX-1-12.

In the course I taught at BYU this past winter, one of the most difficult subjects to teach was that of the self-employment tax; not because of technical difficulty but rather due to uncertainty. In mid February 2012, I was asked by a student, after teaching the self-employment tax law as it applied to 2011, to explain how the self-employment tax was to be calculated for 2012. I explained that I could only accurately predict what the law would provide through the end of February 2012 as the 2% employee portion of the payroll reduction may or may not be extended for the entire 2012 tax year like we had just seen in 2011. The student asked how a small business owner could possibly plan or prepare for the 2012 tax year then not knowing what law would be effective in six months let alone in two weeks. For that question, I had no good answer.

Although there are often good reasons which may argue for a quick change in the Code and/or for a short-term stimulus provisions, I would submit that such changes often will have significant unintended consequences. As part of the tax reform movement, I would urge the Congress to have a bias to minimizing provisions that are either short-lived or retroactive. By doing so, I believe that Congress will enhance the confidence of taxpayers in the United States taxation system and further provide a definitive course that will allow taxpayers to adequately plan for their future while improving the taxpayer experience.

2. CORRESPONDENCE EXAMINATIONS

According to the IRS Oversight Board, correspondence examinations have grown from 72 percent of all IRS examinations in fiscal year 2001 to 78 percent in fiscal year 2010[7]. Of even further significance, these statistics are even more startling when taking into account that correspondence audits amounted to 54 percent of all examinations in fiscal year 2000.[8] Further, according to a 2009 report by National Taxpayer Advocate Nina Olson, "IRS employees spent an average of only 1.6 hours in 'direct time' on each correspondence examination in FY 2008, as compared to 8.5 hours on each office examination, and 46.4 hours on each field examination."[9]

The IRS Oversight Board's stated goal of developing the correspondence examination into a more efficient and taxpayer friendly method of examination is commendable. However, the program as it exists today is in need of improvement.

Improvements for the Correspondence Examination Program

I have spoken with a number of CPAs in my local community about the problems taxpayers have faced with correspondence examinations. These CPAs have raised concerns about: (1) the excessive time it takes the IRS to resolve a taxpayer's case; (2) the great difficulties taxpayers face when trying to contact the IRS to obtain information regarding the status of their correspondence audit case; (3) the numerous telephone inquiry calls taxpayers or their tax representative make to the IRS which go unreturned; and (4) the IRS employees routinely closing cases without having reviewed correspondence submitted by the taxpayer. The IRS will

[7] IRS Oversight Board letter, dated January 11, 2012, to Edward Karl, AICPA Vice President-Taxation.
[8] National Taxpayer Advocate 2009 Annual Report to Congress, December 31, 2009, Volume 1, page 158.
[9] Ibid, page 158.

need to continue to address these kinds of issues in order to reduce taxpayer's burdens related to correspondence audits.

IRS delays in the posting or proper handling of correspondence mailed by a taxpayer to the IRS stands out as a huge concern of CPAs about the correspondence examination program. This is consistent with a February 2011 report of the Treasury Inspector General for Tax Administration (TIGTA).[10] According to the report, the IRS indicated to the IRS Oversight Board in 2009 that it would target three areas for improvements regarding its correspondence audit program, including mail processing. The TIGTA report discusses a "judgmental sample" of 24 default cases after receiving concerns that IRS employees were not following proper procedures in handling taxpayer correspondence. In 17 of these cases, it was concluded that IRS staff did not consider the taxpayers' correspondence prior to closure of the cases. Moreover, in 10 of these 17 cases, the taxpayers' correspondence was not input into the IRS's computer system within the required time period, resulting in the IRS employees involved with the correspondence audit program not being aware that correspondence had been received prior to closure of the cases.

The 2011 TIGTA report mentions that the Wage & Investment Division (W&I) began piloting a centralized model for processing incoming mail at the Austin Compliance Site in February 2010. This pilot provided for the centralization of all mail processing and it included flexibility in planning and staffing. The TIGTA report states that the IRS planned on implementing this model at all W&I and Small Business/Self-Employed compliance sites by June 2011. I recommend that the Senate Finance Committee obtain updated information from the IRS regarding how these new centralized mail processing procedures are presently working.

Unfortunately, based on the informal reactions of other CPAs, no discernible improvements in the handling of taxpayer correspondence mailed to the IRS in response to a correspondence examination have been seen. Thus, to the extent problems continue with mail processing, even with these new centralized procedures in place, I recommend that the managers of IRS employees become more involved with resolving issues with respect to correspondence audit cases more than 6 months old.

With respect to faster account resolution, I suggest that the IRS explore the potential for expanding its e-Services suite of web-based products to handle correspondence submitted by a tax professional on a taxpayer's behalf. Currently, certain tax professionals with proper authorization may use e-Services for disclosure authorization, electronic account resolution, and transcript delivery. If e-Services could be expanded to effectively act as a "portal" for correspondence submitted on the taxpayer's behalf, I believe significant opportunities might be created for resolving correspondence examinations more timely, including the prospects that the correspondence submitted through e-Services might be electronically date-stamped as to its submission date.

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[10] See Treasury Inspector General for Tax Administration Report on "Progress Has Been Made to Re-Engineer the Examination Program, but Additional Improvements Are Needed to Reduce Taxpayer Burden, February 18, 2011.

Correspondence Examinations and Taxpayer Rights

In addition to its February 2011 report, TIGTA has released a number of reports raising concerns about the correspondence examination program and taxpayer burden. Similarly, in her 2011 report to Congress, National Taxpayer Advocate Nina Olson raises significant concerns about the IRS's ability to respond to telephone calls and correspondence from taxpayers.[11] I join CPAs and other tax professionals who support TIGTA's and the National Taxpayer Advocate's concerns about the linkage between improving taxpayer service and the ability of the IRS to properly address taxpayer rights. The IRS has made positive strides by improving its telephone customer service lines and the handling of taxpayer correspondence, but obviously further improvements are warranted.

As part of a correspondence examination, taxpayers are often requested to substantiate specific tax deductions like miscellaneous itemized deductions, state and local income taxes, and real estate taxes. However, it appears that the IRS may be making this substantiation request to a large number of taxpayers who happen to be in an alternative minimum tax position, where these types of deductions have no impact on the taxpayer's ultimate tax liability. The net result is a "no-change" audit for the taxpayer and a waste of IRS resources. I suggest that the IRS create an additional "filter" for its correspondence audit selection process to remove these types of cases from the IRS's active case file. My last correspondence audit involved a request to substantiate miscellaneous itemized deductions. Knowing that such amounts were fully supportable and being unable to contact anyone at the IRS to explain why such efforts on my part would be wasted, I simply advised my client to comply rather than to risk a default judgment. Had additional filters been in place or had a dedicated person at the IRS been available for consultation, the increased time, fees and effort could have been minimized and/or avoided. I see signs of progress in the process with the recognition that there is more work to be done.

3. DUE DATES

I would like to highlight S. 845, the Tax Return Due Date Simplification and Modernization Act of 2011, introduced by Senator Michael Enzi and co-sponsored by Senator Olympia Snowe. While many of the original and extended due dates for important tax and information returns have been in place for years, S. 845 recognizes that compelling reasons now exist for changes in these due dates. This proposed legislation has also received the support of the American Institute of Certified Public Accountants and its Tax Executive Committee.[12]

The interconnectedness of business entities and those who own them now demand a more logical flow of information between parties. Tax returns no longer serve only as a means for taxpayers to self-report and pay their tax liability to the government. Taxpayers, as part of their tax compliance process, equally rely upon the return information of others to properly report their own tax liability to the government. Individuals, S corporations, C corporations, trusts and other partnerships may all invest in or operate partnerships and, if they do, require Schedules K-1 (Form 1065) before completing their returns. S. 845 highlights that the current two-step due-date

[11] National Taxpayer Advocate 2011 Annual Report to Congress, December 31, 2011, Volume One, op. cit., page 9.
[12] Letter to The Senate Finance Committee and House Committee on Ways & Means dated October 8, 2010 by Patricia Thompson.

system for most major returns does not reflect a logical flow of information between or among parties; and thus, the legislation acknowledges that change in the current due date structure is imperative.

Historically, calendar-year C and S corporations have been required to file their tax returns by March 15th (with an extension, to September 15th) while individuals, trusts and partnerships have been required to file by April 15th (with an extension to October 15th). Since January 1997, when the "check-the-box[13]" regulations became effective and "eligible" entities found it easy to file as partnerships, the formation of new limited liability companies, limited liability partnerships and similar state law entities (collectively, LLEs) increased exponentially resulting in a dramatic increase in the number of partnership returns being filed. Understandably, the number of individuals and entities, including S and C corporations, trusts and estates *that invest in LLEs and other federal tax partnerships* has grown significantly causing a dramatic increase in the number of taxpayers that rely on information from partnerships and other pass-through entities in determining taxable income.

The use of tiered partnership structures has also increased in recent years – and with it, the complexity of tax compliance -- by vehicles such as hedge funds, master limited partnerships, business trusts, series LLCs and private equity funds to address nontax issues such as litigation and other risks and to facilitate increasingly complex financial transactions. Further, the increased complexity of the Code and other tax laws has resulted in the need for significantly greater information gathering and analysis. In this new environment, practitioners and taxpayers often find that the current ordering of tax return due dates for partner (i.e., individual, C corporation, S corporation, trust, or other partnership) and partnership make the timely filing of complete and accurate returns difficult, if not impossible to meet. In far too many cases, it has become impossible for the ultimate owner of a partnership interest to obtain the information needed to prepare tax returns on a timely basis. Increasingly complex partnership transactions and reporting requirements have added to return preparation time as additional analysis time is needed to ensure accuracy.

Thus, S. 845 strives to address these problems and improve the prospects for the timely filing of the tax returns of partners, returns that are often not prepared by the same individual or firm that prepared the partnership's return. I encourage Congress to pass this legislation and help modernize the tax return due dates and to correct the mismatch of information flow that persists in the system today. By doing so, Congress will continue to improve the taxpayer experience.

4. **BASIS REPORTING**

The IRS views information reporting as a great opportunity for increasing compliance by taxpayers. Unfortunately, it can also result in an increase in burden for taxpayers. It is in this context that many CPAs are concerned about the issue of basis reporting. I have been hearing from many CPAs about the challenges they faced with respect to the just completed filing season. One of the biggest challenges involved the Forms 1099-B taxpayers are receiving from brokerage firms regarding the "covered" and "uncovered" securities sales taxpayers made during 2011. While brokers were generally required to mail the Forms 1099-B to taxpayers by February

[13] See Treasury Reg. §§301.7701-1 through 301.7701-3.

15 to ensure timely filing of a taxpayer's return, it seems like many brokers have had great difficulties in compiling and reporting the information correctly to taxpayers on a timely basis. It is my understanding that this situation has resulted in major financial institutions having requested extensions of the February 15 transmittal due date to taxpayers.

CPAs are also reporting that wide divergences exist in the format brokerage firms are following with respect to reporting information on Form 1099-B. It almost seems as though nobody's Form 1099-B is the same from broker to broker. For example, one CPA's client has reported that his Form 1099-B actually lists trades that never took place, or it lists amounts for securities trades that are not correct. For other clients, I have heard reports that some brokerage houses have inadvertently reported certain securities sales as "covered" when they should have reported as "uncovered" and vice versa. I have observed inconsistent reporting in my own practice.

Another aspect of this dilemma involves the reporting complexities of Schedule D and Form 8949 which the IRS has adopted for reporting securities sales on 2011 tax returns. The IRS appears interested in entering into a dialogue with CPAs and other tax professionals regarding the complexities with basis reporting. Some possible solutions to the complexities involved with basis reporting include (among others): (1) standardization of the way brokers report securities sales and basis on Form 1099-B; and (2) a suggestion that the IRS forgo "matching" of basis information for purposes of 2011 tax returns.

The 2011 tax year was the initial year that would require credit and merchant card-paying companies to issue tax filing reports to the merchants that they paid related to credit card transactions. Thus, each major credit card company was required to report to each merchant the amount of money that was paid to the merchant, above certain levels, related to credit card processing payments. The stated intent of the reporting requirement was to increase the tax reporting accuracy from businesses related to credit card payments received. These payments are reported on the new 1099-K form.

However, in late December 2011, the IRS, after listening to various constituents and internally reviewing the known weaknesses in the initial filing season of the 1099-K, opted to still require the filing of the forms but to delay enforcement of compliance as long as there was real intent by the reporting parties to comply with the filing obligations. Common thought among the practioner community has been that the IRS will not be attempting to match these 1099-Ks to tax filings until the short-comings in the reporting system can be resolved. I would strongly recommend that the IRS be encouraged to do the same thing related to the new 1099-B reporting system. This forgoing of the match will permit the additional issues to be resolved prior to needless correspondent type audits being conducted to match against misreported 1099-B information.

Again, thank you for this opportunity to present my views and I wish you well in your efforts to improve the taxpayer experience.