



June 8, 2010

The Honorable Douglas Shulman  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Shulman:

Re: Reporting of Uncertain Tax Positions

These comments are submitted by the American College of Tax Counsel (ACTC) with respect to Announcement 2010-9, concerning the reporting of uncertain tax positions. The ACTC is a nonprofit professional association of tax lawyers in private practice, in law school teaching positions and in government, who have been licensed for at least 15 years at the time of their admission and who are recognized for their excellence in tax practice and for their substantial contributions and commitment to the profession. This letter was prepared by the Board of Regents of the ACTC and does not necessarily reflect the views of all members of ACTC, including those who are government employees. None of the members of the Board of Regents who participated in the drafting of this letter have been retained by clients to lobby the Treasury Department or IRS regarding these rules.

Under Announcement 2010-9, taxpayers who have assets above a stated threshold amount (currently proposed to be \$10 million) would be required to file Schedule UTP indicating their uncertain tax positions, which are defined generally as those items for which the taxpayers have established a financial accounting reserve for a potential tax liability. Taxpayers are required to include on the Schedule UTP both a calculation of the maximum tax amount (MTA) for which the taxpayer could be liable if the position taken on their tax return were challenged and a ‘concise description’ of the position, including: a statement that the position involves an item of income, gain, loss, deduction, or credit against tax; a statement whether the position involves a determination of the value of any property or right or a computation of basis; and the rationale for the position and the reasons for determining the position is uncertain.

The ACTC strongly supports transparency in tax matters. We do not believe that taxpayers have a right to “hide” issues from the IRS. Likewise, audits should not be a “cat and mouse” game where the IRS is continually trying to catch issues that are otherwise hidden. On the other hand, the burden imposed on taxpayers should be reasonable, and taxpayers should not be required to guess what might be the IRS’s objections to a position taken on their returns. To balance the benefits to the IRS and the burdens and risks placed on taxpayers, the ACTC believes that taxpayers should be required to disclose on Schedule UTP only a list of the issues for which the taxpayer has established a financial accounting reserve; this list should contain sufficient information to allow the IRS to identify each issue without either a statement of



the MTA or the reasons for determining the taxpayer's position is uncertain. Thus, for example, a taxpayer might state on the Schedule UTP that a reserve has been taken related to the capitalization of acquisition expenses.

A simplified statement identifying each issue could be prepared very easily by taxpayers, and will assist the IRS in auditing the issues that the IRS believes are significant or appropriate. However, this approach will substantially reduce the burden imposed on taxpayers. It will also not require taxpayers to "guess" what might be the arguments that will be raised by the IRS or otherwise set forth an explanation of why a particular position is uncertain as contemplated by the draft Schedule UTP. Furthermore, taxpayers should not be required to estimate a "maximum tax amount," which will be both burdensome and potentially misleading, particularly in situations in which the maximum tax amount vastly exceeds the taxpayer's potential liability.

We hope that you agree with the ACTC that this proposal best balances the interests of the IRS and taxpayers. Please contact the undersigned if you have any questions.

Sincerely,

Richard M. Lipton

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