



November 8, 2022

Federal Tax Controversy

**38th Annual Tax Executives
Institute-San Jose State University
High Tech Tax Institute**



Topics for Discussion

- **State of LB&I and Fiscal Year 2023 Priorities**
- **Inflation Reduction Act and Hiring**
- **Compliance Issues**
 - **R&E Credit Claims**
 - **Virtual Currency Campaign**
 - **965/TCJA**
 - **Large Partnership Compliance**
 - **Revenue Procedure 94-69**
- **Update from the Independent Office of Appeals**
- **Impact of COVID-19 and Post Pandemic Changes**
- **Sharing Best Practices**



Current State of LB&I

- FY23 looks to be a time of great excitement and anticipation
- FY23 starts with legislation that increases IRS funding
- Good stewardship of the increased funding provided by the Inflation Reduction Act
- Recent progress in the IRS' plan to change its structure
- Committed to being active and collaborative towards goal to organize compliance under unified compliance unit
- Address and mitigate potential risks to us achieving our objectives



Current State of LB&I (Con'd)

- Closing enforcement gaps especially in the areas of pass-through entities and high wealth individuals
- Planned efforts are all under the umbrella of just two strategic goals.
- While the first of our strategic goals is about what we can do, the second is about who we can be. This year, we expect our numbers in LB&I to grow.
- Integrate EDI principles directly into the goals



LB&I Strategic Goals

Our foremost goal is to meet our tax responsibilities effectively. For many years, LB&I has focused on using data to select better work, distributing cases effectively across the field of LB&I compliance personnel, and refining the programs in our portfolio to be as effective as possible

FY2023 LB&I Strategic Goals:

- Meet our tax administration responsibilities effectively
- Support current and future LB&I employees by pursuing sustainable, consistent workplace improvements that incorporate the future of work



Meet our tax administration responsibilities effectively

LB&I Strategic Goal - Meet our tax administration responsibilities effectively

- Efficiently and effectively implement the new tax and service provisions of the Inflation Reduction Act
- Continue efforts to select the best work and optimally use our resources through a variety of means, including:
 - o Enhancing our capabilities to receive and use data
 - o Pursuing form improvements that deliver better data from taxpayers
 - o Further refining our compliance programs to increase effectiveness and efficiency (e.g. LCC, CAP, campaigns)
 - o Exploring the best options for case assignment (continued focus on pushing out the next best case, not driven by geography)



Meet our tax administration responsibilities effectively (con'd)

LB&I Strategic Goal - Meet our tax administration responsibilities effectively

- Increase our work in the areas of pass-throughs and high income/high wealth to reduce the tax gap and effect greater fairness across all taxpayer groups
- Consider potential issue resolution options for taxpayers
- Further address key compliance issues/emerging issues
- Continue efforts to be a paperless/digital organization



Support current and future LB&I Employees

LB&I Strategic Goal - Support current and future LB&I employees by pursuing sustainable, consistent workplace improvements that incorporate the future of work

- Support a hiring and onboarding strategy to increase enforcement personnel to address high priority areas
- Define and adopt a modern workplace environment that supports employee flexibility while effectively meeting the needs of tax administration
- Build intentional, meaningful employee engagement opportunities



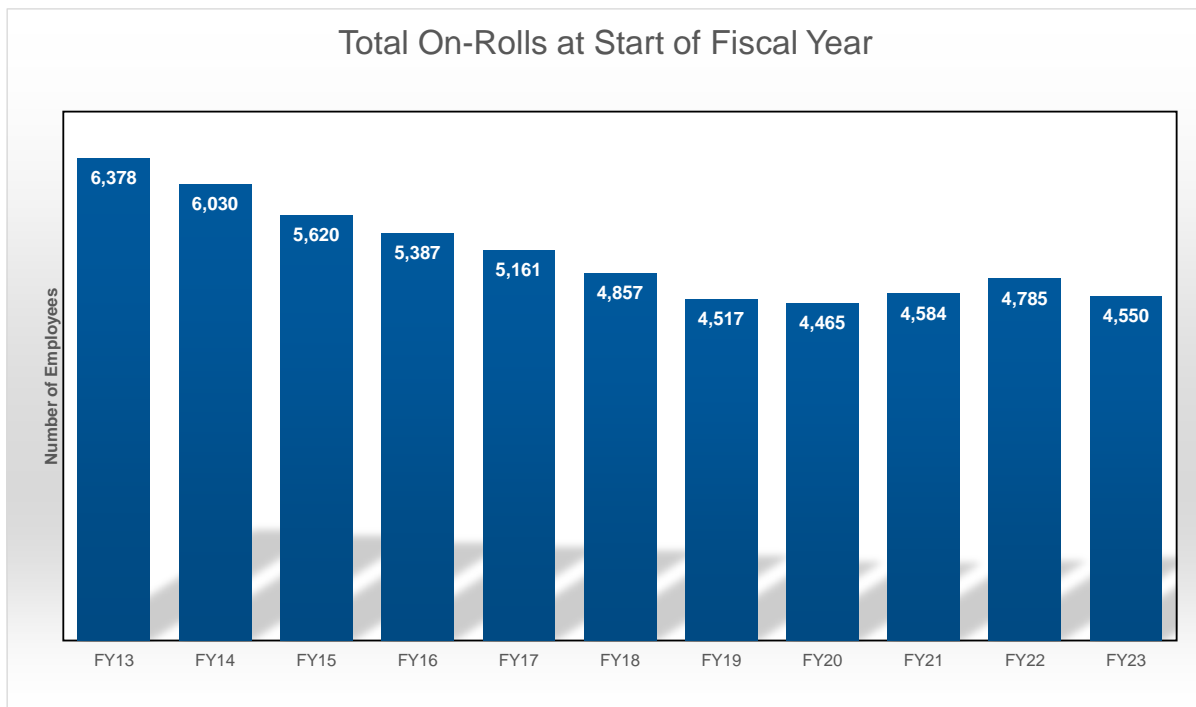
Support current and future LB&I Employees (con'd)

LB&I Strategic Goal - Support current and future LB&I employees by pursuing sustainable, consistent workplace improvements that incorporate the future of work

- Support employees through continued work and Servicewide collaboration on hiring, training, career, and personal development
- Foster a transparent, diverse, and inclusive culture where employees are both comfortable raising issues and confident that those issues will be addressed



LB&I Staffing Over the Years





LB&I Hiring – FY22

LB&I Hiring FY22

- Final # Added to Rolls
 - LB&I 311
 - WCPA 33
- All Job Classifications
 - Revenue Agents – including CAS, international, transfer pricing, and financial products
 - Engineers
 - Economists
 - Appraisers
 - Tax Law Specialists



Taxpayer First Act and Inflation Reduction Act

- Over the last ten years, IRS' budgets have decreased or remained flat despite increasing demands on the agency. As a result, IRS personnel has dramatically reduced through attrition and hiring freezes, which has constrained the agency mission and business results.
- In January 2021, pursuant to the [Taxpayer First Act](#), IRS published a [Report to Congress](#) (RTC) which included recommendations for organizational redesign to reduce inefficiencies and improve the taxpayer and employee experience.
- Building on the work the Taxpayer First Act Office did to publish the TFA Report to Congress, and with potential for increased hiring, we're focused on building an IRS for the next generation.
- We're now shifting our focus to prioritize the long-term strategic recommendations in the Report to outline how we're structured, how the agency operates and how we make progress with our FY2022 budget resources.
- The TFA Office/IRS NEXT have become the Transformation and Implementation Office, which will focus on implementation of new tax law provisions, taxpayer services transformation, tax compliance transformation, human capital transformation and communications and outreach efforts



▪ About IRA:

- A transformational moment for our agency – and an opportunity for the improvement of future tax administration
- Funding over 10 year will help us in many areas, including adding important resources for not just tax enforcement but taxpayer service and technology
- Improve taxpayer access to tools and information
- Implementation of IRA by the Transformation and Implementation Office



▪ Compliance Transformation:

- Underpayments by tax evaders shift the burden of operating our great country onto honest, hard-working Americans who follow the law
- Treasury directive that audit rates not rise relative to recent years for households making under \$400,000
- Special focus on corporations, passthrough entities and high-income taxpayers
- While enforcement is a key part of the package, this funding is not just about audits and enforcement. It provides critical multi-year funding for IRS modernization that will benefit all taxpayers



▪ **Human Capital Transformation:**

- We will pursue a thoughtful, measured increase to our personnel
- IRS has one of the oldest workforces in government, and we're losing about 10,000 employees a year
- Current IRS staffing is far below historical norms
- We will build and expand off recent successes by IRS employees. Since the pandemic began, IRS employees successfully delivered 500 million payments worth over \$1.5 trillion to people across the nation through tax refunds and by implementing various COVID-related relief measures even with limited resources. IRS handled more than \$830 billion in stimulus payments and delivered more than 200 million advance Child Tax Credit payments.



▪ **Taxpayer Service Transformation:**

- While enforcement is a key part of the package, this funding is not just about audits and enforcement.
- The funding will go toward substantial service improvements for taxpayers as they interact with the IRS. We will improve customer service, answer more calls, process returns and refunds faster, update our computer systems, and simplify tax filing.
- Work to fully staff Taxpayer Assistance Centers
- Improve phone service for the 2023 filing season
- Conduct an independent review of Free File
- Move into the digital age



Inflation Reduction Act

▪ **IT Transformation:**

- Additional funding will enable the IRS to tackle the transformation of core tax systems and address some major pain points for taxpayers.
 - Adding new features to IRS Online Account that make it easier to communicate with the IRS;
 - Equipping IRS employees with the ability to retire paper-based processes by transitioning to digital platforms; and
 - Making it possible for large corporations to share large files with the IRS more seamlessly



Compliance Issues

▪ **Compliance Issues**

- **R&E Credit Claims**
- **Virtual Currency Campaign**
- **Large Partnership Compliance**
- **965/TCJA**
- **Revenue Procedure 94-69**



- **Background**
 - Fact-, time-, resource-intensive issue
 - Stakeholder feedback
- **Research issues initiatives**
 - Research risk review team
 - Centralized risk review
 - Compliance assurance process (CAP)
 - Research issue campaign
 - ASC 730 Directive updates
 - Research credit claims
- **Treasury Regulation Section 301.6402-2**
 - “Specificity Standard”
 - Valid or deficient



- **Clarification**
- **Opportunities to deselect inventory resulting in identifying the right work for field examination (IRS)**
- **Expected reduction in claims examinations**



Research Credit Summary

- First, the IRS issued a [press release](#) in October 2021 and provided a grace period for feedback/comments. Most recently, the Service issued an [Interim Guidance Memorandum](#) outlining expectations for field examiners.
- Second, there is a transition period where taxpayers will be provided 45 days to cure a claim that is defective.
 - Recently extended to January 10, 2024
- Third, the IRS continues to maintain a dedicated mailbox to receive taxpayer and stakeholder feedback/comments:
irs.feedback.recredit.claims@irs.gov
- Fourth, the IRS maintains a list of [Frequently Asked Questions](#) from feedback/comments from the dedicated mailbox.



Virtual Currency Campaign

- ❖ IRS recognizes that how people transact in the digital economy has changed
- ❖ Resulted in an increasing the potential for fraud and abuse and steps need to be taken to address the tax gap
- ❖ Noncompliance related to the use of virtual currency addressed through multiple treatment streams including outreach and examinations
- ❖ Beyond this campaign, the IRS steadfastly remains committed and equipped to implement changes to worldwide taxation regarding the digital economy



Large Partnership Compliance (LPC) Objectives

- Identify the largest partnership cases by focusing on the characteristics of the largest Form 1065 filers
- Develop improved methods to identify and assess the compliance risk presented by these taxpayers
- Consider examination processes and tools that will allow us to better audit this population, and
- Enhance IRS' understanding of large partnership compliance issues through feedback



What is Large Partnership Compliance

- Separated LCC and LPC into two programs
- Modified the LCC pointing criteria, recognizing the way partnerships report activity
- The largest partnerships based on assets, gross receipts, foreign activities, rents and Schedule K income and expenses
- Criteria is subject to further refinement based on our continued learning about large partnerships



Large Partnership Compliance Examinations

- LPC examinations will be conducted using existing examination processes and procedures including:
 - LB&I Geographic Practice Areas will conduct exams
 - Pass-Through Entities Practice Area (PTE) provide coordination, training, and support
 - Other Practice Areas provide specific issue support
 - LB&I's examination procedures (LEP) used
 - BBA procedures including deficiency procedures if those are applicable
 - Exam team structure like LCC
- LPC Examinations are underway



Cross Border Activities (CBA) Priorities

- **CBA Current Priorities**
 - TCJA Compliance
 - IRC sec. 965
 - TCJA Regulation Validity Challenges



Tax Cuts and Jobs Act (TCJA)

- Majority of Work
- Training
- Knowledge Network
- Cadres
- *New* Foreign Tax Credit Regulation
- IRC 965(h) account issues



IRC 965 Campaign Background

- Goal of campaign is to promote compliance with IRC 965
- Treatment Stream will include conducting examinations as well as providing technical assistance to teams with IRC 965
- Campaign started with 2017 returns and generally required looking at 2017 and 2018 returns
- Risked for other TCJA issues
- Campaign Extensions
 - Partnerships
 - S-Corps
 - Insurance returns



IRC 965 2018 Strategy

- Ensure compliance for the 2018 year
- Maximize lessons learned from 2017 campaign
- Two-part strategy
 - Examine taxpayers
 - Soft letters for non-reporters



Soft Letter

- Campaign similar to the soft letter campaign for individuals - WEIIC
- Identify taxpayers with accumulated net Earnings and Profits on Form 5471 who did not report 965 income and/or liability.
- Send out soft Letters
- Evaluate Results



TCJA Reg. Validity Challenges – LB&I Perspective

- Taxpayers have filed many challenges to TCJA regulations
- Taxpayers have used several different forms and disclosures to report (Amended Return, 8275-R, Sch. UTP, Whitepaper, 94-69 Disclosures, etc.)
- Revenue agents have been instructed to follow the regulations as published, regardless of challenges.
- Revenue agents are forwarding each instance of a challenge to a centralized LB&I team, so that the division is aware of the entire inventory of challenges
- Associate Chief Counsel Office is highly involved in assisting LB&I and evaluating the legal merits of challenges



Revenue Procedure 94-69

Update on Revenue Procedure 94-69

- While LB&I no longer has a continuous audit program, there is nonetheless a small subset of taxpayers who will likely be in some form of continuous audit posture with LB&I because of the nature of their transactions and return filings
- For this narrow group of taxpayers, some form of the disclosure process that existed under Rev Proc 94-69 may be appropriate
- Defining the scope of that "continuous audit" population will be addressed in guidance that will update Rev Proc 94-69



- In addition to refining the scope of who is eligible for this special disclosure process, we will be standardizing the process for making these disclosures so that eligible taxpayers and revenue agents are working with consistent guidelines around what constitutes an adequate disclosure
- A new draft form Form 15307 PDF has been developed for this purpose
- We've received internal and external comments on the Form 15307 and aim to have it released shortly after the updated guidance is released



Independent Office of Appeals

November 8, 2022



Appeals Update

- Appeals is Hiring
 - USAJobs.gov
- Return to the office in June 2022
- Conference Methods
 - Telephone, Video, In Person
- Initial Contact Letters
- Taxpayer Digital Communications (TDC) Secure Messaging
- Q&A

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Fast Track Settlement - Key Points

Key points about FTS include the following:

- **FTS program is jointly administered by the LB&I Division and the Office of Appeals**
- **FTS provides an opportunity to resolve their disputes with an Appeals Official using mediation skills and settlement authority**
- **FTS enables taxpayers and the IRS to work together to resolve outstanding issues while the case remains in LB&I jurisdiction**
- **Generally completed in 120 days**

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Key points about FTS include the following:

- Eligibility
- Mandatory Consideration
- Copy provided of the Fast Track Settlement [Pub 4539](#) at the opening conference
- Appeal Rights retained

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Fast Track Settlement Program (FTS)

❖ FY22 through July:

- 30 Fast Track cases resolved
- 31 Fast Track cases accepted
- 10 Fast Track cases in-process
- 0 Fast Track withdrawals
- 23 Fast Track cases agreed

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Impact of COVID-19 and Post Pandemic Changes

- IRS Return to Office (RTO) implemented June 2022
- Continuing to monitor impact to taxpayers and our workforce, respond accordingly, and afford flexibility where feasible
 - Revised IDR Directive guidance expired 9/30/21
 - Revised case processing procedures
- Temporary approval to receive documents and transmit encrypted documents by email extended through October 31, 2023
- Temporary deviation through October 31, 2023, allowing digital signatures on certain specified paper filings



Lessons Learned

- LB&I employees can effectively work remotely
- LB&I employees were committed, flexible, and overcame challenges
- Movement towards paperless processes
- Able to successfully onboard employees remotely, including Pathways
- Need to timely update employees and provide a forum for feedback
- Need to take steps to remain connected, provide a sense of community



- Electronic Communications
 - Microsoft Teams
 - Taxpayer Digital Communications Secure File Sharing – Secure Messaging (TDC SFS-SM), see [Publication 5425](#) for more information
 - Secure Email Messaging System (SEMS)
 - Cisco WebEx Meeting Server (CWMS)/WebEx Client Software video conferencing **phased out in May 2022 due to Teams**
 - Zoom for Government (ZoomGov) video conferencing **phased out in June 2022 due to Teams**
- Future of on-site audits
- Geographically dispersed teams



- Forms 1139 entering exam workstream
- Joint Committee review process
- Anticipate increase in filings of preliminary returns followed by subsequent filing of a superseding return
- TCJA limitation for 163(j) was primarily based on 30% of Adjusted Taxable Income (ATI). The CARES act modified ATI limit to 50% instead of 30% for taxable years beginning 2019 and 2020
- Corrected the QIP recovery to a 15-year recovery property under IRC §168(e)(3)(E) and 20 years under IRC §168(g)(3) retroactive to the date of the original TCJA provision, Dec. 31, 2017