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Statement of Dean Zerbe
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United States Senate Committee on Small Business and Entrepreneurship Hearing On
“Targeted Tax Reform: Solutions to Relieve the Tax Compliance Burden(s) for America’s Small Business”

Mr. Chairman Vitter and Ranking Member Shaheen:

Thank you for inviting me to testify before the Senate Committee on Small Business and Entrepreneurship on this important topic of tax reform and small business. It is vital that as Congress considers tax reform that consideration is given to the burdens the tax code places on small businesses and new businesses. While Congress hears every day from the Fortune 500 it is critical that the voice of small businesses is also heard as we discuss tax reform – so I commend you Mr. Chairman Vitter and Ranking Member Shaheen for having today’s hearing.

As background, alliantgroup is a leading tax service provider for small and medium businesses across the country. alliantgroup has approximately 650 professionals (lawyers, accountants as well as technical experts in biology, chemistry, engineering, etc.) located nationwide with headquarters in Houston, TX. Since its founding in 2002, alliantgroup has worked with hundreds of CPA firms and assisted them in helping over 15,000 small and medium businesses realize over \$3 billion in tax incentives (for example, we help small and medium businesses qualify for the Research and Development Tax Credit, IC-Disc export incentive; Section 179D energy efficient commercial buildings, etc.). In addition, alliantgroup has approximately 50 attorneys that– assist and defend small and medium business when they are subject to examination by the IRS.

Mr. Chairman, I wanted to touch on five points in my testimony – 1) making the incentive and credits in the tax code work better for existing small businesses; 2) making the tax code work better for new businesses; 3) encouraging greater employee ownership – “every man an owner”; 4) IRS service, assistance and education for small businesses; and, 5) issues and concerns regarding IRS examination of small businesses.

1. A Tax Code for Small Business

One of the most important changes that Congress could make in Tax Reform is to take steps to ensure that the credits and incentives that are provided to businesses actually work for small businesses. Too often lost in the balloons and speeches surrounding a new tax incentives is that the tax incentive has built-in provisions that will effectively bar or limit small businesses from taking the tax benefit or that the burden of recordkeeping and compliance is so great that for a small business the tax benefit simply isn't worth the candle.

Let me give you a real example from a world I know well – the Research and Development (R&D) Tax Credit. The R&D tax credit is the largest tax credit available for businesses – approximately \$10 billion dollars a year. As a General Accountability Office Report “Tax Policy: The Research Tax Credit’s Design and Administration Can Be Improved”¹ found businesses with receipts of \$1 billion or more accounted for about 65 percent of credits claimed – but businesses with \$250 million or less in receipts accounted for 16.7 percent of credits claimed in 2005 and the smallest businesses (those less than \$5 million in receipts) getting approximately 7 percent of the credit.

Why are small and medium businesses not taking advantage of the R&D tax credit? It certainly isn't the case that small and medium businesses aren't doing innovative work – these companies are often the leaders in innovation and job creation. The bar for small and medium businesses is three

¹ GAO – 10 – 136 (November 2009) www.gao.gov/new.items/d10136.pdf

things: the law, the IRS and taxpayer education. Let me talk about the law first – and will discuss the IRS and taxpayer education as part of my comments about the IRS.

The law is easily the biggest barrier for small companies taking the R&D tax credit. Right now Section 38(c) of the tax code serves as a high hurdle for thousands of small and medium businesses to take the R&D tax credit. In short, Section 38(c) says that a company's owner cannot reduce her taxes below the AMT amount with the R&D tax credit (as well as a host of other business credits – see Section 38(b)).² The end result, hosts of small and medium businesses that do work that qualifies for the R&D tax credit can't utilize the R&D tax credit. It is common for alliantgroup – working with our partner CPAs to find in a review of the CPA's clients that 7 or 8 out of ten companies that are doing work that qualifies for the R&D tax credit can't utilize the R&D tax credit because of the AMT bar.

To argue that business owners can roll the credit forward to the next year is not realistic or practical. Qualifying for the R&D tax credit is not a walk in the park for a business – and to put forward time, costs and expenses this year for a possible potential benefit down the road is not a good use of a small business owners limited resources. The end result – small and medium business owners don't take the R&D tax credit.

Now, Congress – led by Senators Grassley (R-IA) and Baucus (D-MT) – put in place a one-year fix to this problem in the Small Business Jobs Act of 2010. The AMT bar was removed for the R&D tax credit and other credits for one year. The result of this change? – dancing in the street by small and medium business owners. We saw first-hand the real change this provision being able to use the R&D tax credit made for hundreds of small and medium business owners, their local economies and their ability to create jobs.

² For a detailed discussion of the mechanics of the AMT bar, a good guide is this [article](#) – “New Law Opens Door for Businesses to Take R&D Tax Credit and Other General Business Credits” by myself, Ben Yaker and David Ji published by Thompson Reuters.

Unfortunately, it was only a one-year fix. The Senate Finance Committee last year (led by Senators Roberts (R-KS); Schumer (D-NY) and Grassley had the AMT turnoff included in the markup of extenders – agreed to by the House but dropped in conference when agreement couldn't be reached with the administration on the overall bill. We strongly encourage the Senate to include the AMT turnoff for the R&D tax credit in this year's extenders. The House – in its R&D tax bill by Congressman Kevin Brady (R-TX) has included the AMT turnoff. So fingers crossed.

I tell you all this Mr. Chairman and Ranking Member – not just to ask for your help to get this commonsense fix signed into law (which we would greatly welcome) – but as an illustration of how one code section – 38(c) can serve to completely undermine the Congressional policy and goals of another code section – Section 41 the R&D tax credit. Further – this is not a one-off – the tax code is replete with these types of problems for small and medium businesses (the code giveth with one hand and taketh with the other). I would note – even with all the good work and effort by a number of Senators and Members of Congress, it has not been an easy lift by any means to get this bipartisan fix to the popular R&D tax credit done.

My recommendations in tax and for tax reform:

- 1) Reform can start today – make where possible changes in the law that will allow small and medium businesses to take advantage of the credits and incentives in the tax code. As an easy example, the AMT turnoff for R&D tax credit. In addition – permanency of the tax extenders – especially Section 179(d) expensing and the R&D tax credit would be of particular benefit to small businesses. Also, the Committee should consider the negative implications of Section 280C(c) which serves as another disincentive for small and medium companies taking the R&D tax credit -- allowing 280C(c)(3) reduced credit election on amended returns – would eliminate the headache of having to amend state returns which is a deterrent for some small businesses in

taking the credit as the compliance costs may outweigh the benefit and the amended returns may result in higher state taxes. One related note – the Committee should also consider what Treasury is doing in regulations – Treasury can do much good to help small businesses (and has – see footnote 4 below) but Treasury can also take steps unhelpful for small business – for example proposed regulations on family limited partnerships could potentially harm family business planning. See “*IRS Takes Aim at an Estate Planning Strategy*,” Wall Street Journal, June 26, 2015.

- 2) Knowledge is king. This Committee especially – but also the entire Congress -- needs to understand better what are the roadblocks and barriers keeping small businesses from fully benefitting from the credits and incentives provided in the tax code. The SBA Office of Advocacy issued a [report](#) in November 2013, entitled, “Measuring the Benefit of Federal Tax Expenditures Used by Small Business.” The report highlights some of the same issues I’ve put forward – small businesses often getting the short stick on tax expenditures – but doesn’t get at all into the “why.” This Committee should ask the SBA Office of Advocacy as well as the Taxpayer Advocate at the IRS and the GAO to analyze and discuss the barriers for small businesses preventing them from fully benefitting from tax expenditures³. The GAO did an excellent job of identifying the problems and barriers for small businesses in their report on the R&D tax credit (cited above) – and should be tasked to do a more expansive review. The bottom line – when small and medium businesses are not proportionally claiming a credit or incentive – is to ask why? alliantgroup and its CPA advisors would also be happy to assist the Committee in this effort.

³ See the Taxpayer Advocate’s thoughtful [testimony](#) on these issues generally from a House Small Business Committee hearing, April 13, 2011 “*How Tax Complexity Hinders Small businesses: The Impact on Job Creation and Economic Growth*.”

- 3) Ask the hard questions. When the Senate is considering tax reform – this Committee should review and consider what the impact will be on small businesses. Will small businesses be able to fully qualify for the tax benefits? Are there any limitations to small businesses benefitting? Can these be addressed? Should/can there be a safe harbor or a simpler rule for smaller businesses to qualify for the same tax benefit?
- 4) Simpler and easier. This goes in some ways hand-in-hand with number 3 above. In reviewing tax legislation, the Congress needs to be aware that the more complicated provision is, the more bells and whistles in the legislation -- what that really translates into for small businesses is higher compliance costs and a good likelihood that the small business will not even seek the tax benefit (thus undermining the policy goals Congress wants to accomplish). A good example is some of the hiring credits and incentives at the state and federal level – they often require taxpayers to hop-on-one-foot; wear-a-pink-dress and have-a-bow-in-your-hair requirements to qualify for x dollars that for small business owners they (and their CPA advisors) don't even bother.⁴ As a general rule – a heightened sensitivity to the costs and burdens for small businesses of tax compliance is vital to bear in mind when considering tax reform.

Finally, Mr. Chairman, I have not had the opportunity when this testimony was written to review all the details of your proposed legislation – The Small Business Tax Compliance Relief Act – but from what I've seen so far – increasing the safe harbor for purchases of tangible personal property; expanding eligibility for cash accounting; and others will certainly be welcomed by a partner CPA firms. Proposals from the AICPA, including allowing delay of partnership filing to after April 15th merit consideration.

⁴ An example of a burden for small businesses that was recently eliminated through a change in the regulations is allowing businesses to take the R&D Alternative Simplified Credit on amended returns. Previously, businesses could take the Alternative Simplified Credit for R&D only on an original return. This regulatory burden disproportionately burdened small businesses – see my [article](#), “Surprise Change To R&D Tax Credit Rules Is Big Help For Small Business” in Forbes providing further details. Bottom line – a seemingly small issue – that you can't take a provision on amended returns – has significant and disproportional negative impact on small businesses.

alliantgroup would be happy to work with and the Committee as the Senate considers this legislation further. I commend you for your efforts on behalf of small businesses.

2. Tax Code -- New Business and Entrepreneurs

The Committee is right to declare that it is a Committee for both Small Business and Entrepreneurship. Supporting and encouraging entrepreneurship is vital to the long-time success and growth of this country. A 2010 NBER [paper](#), "*Who Creates Jobs? Small v. Large v. Young*" highlights the enormous importance of new businesses in creating jobs.

There is much that the tax code could do to encourage entrepreneurs and job creation. One of the biggest difficulties is that it is difficult for startups to benefit from tax incentives because the incentives are designed only for businesses that pay income tax. It is important to remember that startups – even those not making a profit – still pay a great deal of taxes (payroll, excise, etc.) even if they are not paying income tax. For the business owner it's all tax regardless of how it's labeled.

I see this problem of tax benefits not being available for startups and new businesses particularly in play with the R&D tax credit. Some of our most innovative and cutting edge work is being done by small start-ups – yet these companies that we should most want to encourage get zero benefit from the R&D tax credit.

I commend Senator Coons (D-DE), a member of this Committee, for his thoughtful approach with The Innovators Job Creation Act – a bipartisan bill introduced with Senators Roberts (R-KS) and Schumer (D-NY). The legislation allows start-ups to take the R&D tax credit against employment taxes – up to \$250,000 per year. Finally! Start-ups doing some of the most interesting work in the country can look to benefit from the R&D tax credit – if this becomes law. Thanks to the hard work of these three Senators – this legislation was included in the tax extenders bill passed by the Senate and was accepted by the House. It was only when there was a failure to reach an overall deal on tax extenders that this

important legislation was not included in the final agreement. The Finance Committee will soon be marking up the tax extenders bill – and I have high hopes that this will be included in the Senate package. I would encourage the Committee to voice its support for this legislation. Thanks to Senator Coons’ leadership we have a chance to see a real game-changer in terms of tax policy for startups.⁵

Mr. Chairman I should note that your state of Louisiana (as well as Minnesota and a number of other states) had a refundable R&D tax credit program. Alliantgroup has worked with scores of Louisiana entrepreneurs and business owners to qualify for the Louisiana R&D tax credit – both the regular state credit as well as the refundable credit. Unfortunately, due to budget limitations, Louisiana has effectively set aside the state’s refundable R&D tax credit. The state’s actions are most unfortunate – leaving scores of Louisiana small and new businesses in the lurch – businesses that hoped and counted on the dollars from the Louisiana refundable R&D tax credit to keep their doors open, grow their business and create more jobs.

Mr. Chairman, I wish you good luck on your efforts to become Governor of Louisiana and I hope that once you are sitting in the Governor’s chair you take a moment to revisit the Louisiana refundable R&D tax credit – first to make certain that the businesses that in good faith applied for the credit are treated fairly and equitably; and, second, to look at bringing back the refundable R&D tax credit that did so much to put out the “welcome” mat for innovative businesses to come to Louisiana.

Some final thoughts on encouraging entrepreneurs – consideration must be given to how to bring capital investment to new business and encourage risk-taking. I encourage the committee to look at the excellent work done by the Kaufmann Foundation -- especially their [report](#) on the “Start-up Act 3.0.” Particularly interesting is the Foundation’s proposal for a 100% exclusion for gains on investments in small business stock – Section 1202. Proposals that the Committee should also consider include \$100

⁵ For more details on Senator Coons’ proposal see [article](#) in Harvard Business Review by myself and Dhaval Jadav “Finally, A good idea from Congress (and it helps start-ups)”.

exclusion on corporate taxable income by a qualified small business (\$50 million valuation) in its first year of profits and 50% exclusion for years two and three (put forward by the National Advisor Council on Innovation and Entrepreneurship at the Department of Commerce).⁶

3. Encouraging Employee Ownership – “Every Man an Owner”

Mr. Chairman – you know better than I that the phrase “Every Man A King” is a part of the fabric of Louisiana politics. As you and your colleagues in the Senate consider tax reform, I would ask that Congress consider embracing a new standard: “Every Man An Owner.”

As Congress considers tax reform, hard consideration should be given – especially by this Committee – as to ways to encourage greater employee ownership.

The tax code, especially with ESOPs and estate tax provisions has encouraged business owners to provide for employees to have more of a stake in their company. Recent research – brought forward in a compelling recent book, “The Citizen’s Share” by Professors Blasi, Freeman and Kruse (Rutgers, Harvard and Rutgers respectively) highlights the significant analysis that shows the marked benefits of greater employee ownership for everyone – shareholders and employees. Benefits of greater employee ownership include according to the book:

“Strong evidence that employee stock ownership and profit sharing have meaningful impacts on workers’ wealth. Workers with profit sharing or employee stock ownership are higher paid and have more benefits than other workers.”

The book also highlights findings that greater employment and profit sharing lead to providing workers more job security and better working conditions. Further, employees with ownership interests

⁶ A general discussion of these ideas and others can be found in my Forbes [article](#): “Top 7 ideas for tax incentives to create jobs”

state that they are willing to work harder, are more loyal, will make suggestions to improve the company and are willing to stay with the company.

Some of these goals of greater employee ownership are similar to those voiced by supporters of ESOPs – and I applaud that Senator Cardin (D-MD) has authored legislation to address issues regarding ESOPs, particularly of note expanding eligibility for ESOPs for certain SBA programs. I encourage the Committee to review the recent articles in Tax Notes – the first, April 23, 2015 *“The Problem With ESOPs,”* by former Treasury Official William Bortz and a response *“Do ESOPs Need Reform? A Look at What the Data Tell Us,”* by Corey Rosen of the National Center for Employee Ownership, June 22, 2015.

However, while it is important to look at ways to improve and strengthen ESOPs -- my view is that the Senate should step back and look at new and bolder ways to encourage employee ownership – to look beyond ESOPs. With Presidential candidates now speaking up about profit-sharing and employee ownership – it is time for the Committee and the Senate to consider these issues closely and not just look at half-measures or token gestures (especially so, given the evidence of the benefits for workers) – but rather, swing for the fences. Specifically tax incentives for businesses (for example, lowering of the corporate rate or the individual rate for business owners) that provide substantive employee ownership/profit sharing as part of a workman’s pay package. The Committee needs to consider what changes would be required in the tax code, including estate tax, to force a real rethink and change in business in regards to employee ownership and profit-sharing as part of workers compensation.⁷

As a path to greater employee ownership and sharing of profits – I encourage the Committee to also look at the area of tax and accounting treatment of stock options – with a useful [primer](#) from the

⁷ See the NY Times [oped](#) by Professor Folbre *“Wanted: More Worker-Owners”* and my article in [Forbes](#), *“Raising Minimum Wage? How About Raising Employee Ownership?”* -- both providing useful discussion and links to other articles and discussions on this issue.

Congressional Research Service – “Employee Stock Options: Tax Treatment and Tax Issues” by James Bickley, June 15, 2012. It is beyond this testimony, but my impression from talking to business owners is that the current tax laws discourage and limit employees benefitting from the success of their company through stock options and grants of stocks. In particular, the tax laws are not kind when it comes to significant stock options that will encourage employee ownership. For example when compensation for an employee is 50 percent cash and 50 percent stock options – the employee may not have cash to exercise the options or pay the taxes upon exercise. Congress needs to engage with industry and find a workable solution – all to the benefit of workers getting a bigger piece of the pie.

A key part of tax reform should be making the path easier and smoother for employees to benefit from the success of the company’s they work for – such reforms would be a critical step to addressing equity for working families in today’s world.

4. IRS Service, Assistance and Education

It is an old chestnut in tax administration that often forgotten is the “service” part of the Internal Revenue Service. However, particularly for small business owners – and their CPA advisors – the service part of the IRS is an important and critical part of tax administration.

Service and Assistance

Unfortunately, Senators on this Committee – and certainly tax practitioners – are familiar with the litany of problems at the IRS – phones not answered, service centers not properly manned. I was dispirited to see recently in Houston a line stretching outside for 30 yards in the Summer heat for people waiting to talk to an IRS official at a taxpayer assistance center (that was just to get in the room to then wait with another 50 people).

For a small business owner -- subject to an audit or examination the problems at the IRS only get worse. If it is a correspondence audit – it can be maddening to deal with a new person every time you call the Service Center – and have to explain all over again what the problem and issue (assuming you get through). If it is an in-person audit – the hope and prayer is that the examiner is trained and knowledgeable about the tax issues. If not, it can be hours of additional time and cost for the small business owner dealing with an examiner who isn't familiar with the law.

Let me be clear – I view that there are a strong number of good, capable people at the IRS – doing important work. There are also a small number of employees that are problems. In between though there are a significant number of IRS employees who are well intentioned and dedicated but haven't received proper training, guidance and support.

The IRS senior management faces a significant challenge of showing and convincing leadership in Congress that they are responsive to concerns about the agency. IRS senior management must every day work to restore the confidence of the Congress and the taxpayer in the IRS. My hope is that the Congress will also take steps though and pass taxpayer rights legislation – including small business taxpayer rights – that will address the concerns of overreach and improper actions by the IRS. That said -- the current situation at the IRS in regards to service is untenable. After necessary reforms are passed, Congress needs to revisit the adequacy of IRS resources in relation with the required work of the IRS and the level of service the Congress wants IRS to provide taxpayers. At the end of the day – small business owners and their CPAs want an IRS that is performing and functioning in a manner expected of a professional service organization – answering phones, responding to letters, providing necessary guidance, examiners knowledgeable in the law, etc. Improvements in service will translate into lighter burden, less time and lower cost for small business owners to comply with the tax code – and better compliance.

I would suggest that the Committee consider writing the IRS on the following regarding service:

Online service -- Individuals can get access to their accounts but there is not a way for business entities to have online account access. Online account access could help with resolving account issues when a business gets an IRS notice without having to call and being on hold for long periods of time just to get an account transcript. For example, maybe a payment has been posted to the wrong tax year or account, employment versus income tax. Penalties could result. Also, individuals can check on status of amended returns online but businesses cannot. It is hard for a business to find status of amended returns. The IRS should make this a priority of work.

Written correspondence-IRS has acknowledged previously that backlogs exist in correspondence. A taxpayer should not have to respond multiple times to the same inquiry when it is due to IRS not reviewing a prior response. The IRS should be asked what efforts are being made to address this issue.

Education

Hand-in-hand with service is education. As I mentioned at the beginning of my testimony, so often a reason a small business owner doesn't take a credit or incentive is simply due to lack of knowledge and information about the incentive. Too often there is a view of small business owners that the tax credits and incentives provided by Congress are really just for the big boys – the Fortune 500. I know that is not the case – but the view dies hard. In addition, small business owners don't have the benefit of an army of tax lawyers and accountants in-house to call on to provide advice on all the intricacies of the tax code. The CPA firms for small businesses are understandably often up to their neck just trying to comply with significant basic blocking and tackling necessary for their clients. The end result – small businesses don't take a good number of the credits and incentives available for them in

the tax code because of either self-censoring (thinking they don't qualify – only for the big guys) – or just plain “don't know.”

The IRS has certainly beaten the drums on encouraging taxpayers to take some tax credits and incentives – such as the Earned Income Credit and some of the credits and incentives from the recent health care bill. However, the IRS is often dead silent when it comes to educating small business owners about tax credits and incentives. I appreciate that the IRS has a great deal on its plate and can't be all things to all people. However, what is concerning is that not only does the IRS do little in the way of education, but also the IRS can at times give a fairly hard eye to those seeking to educate small business owners about credits and incentives provided for by Congress. Let's be clear – I'm not talking about someone hawking some borderline tax shelter – I'm talking about some of the most basic credits and incentives in the tax code.

I would suggest that it would be most helpful for the Committee to ask the IRS: 1) what it is doing to encourage and educate small businesses about the tax credits and incentives that are available for qualified business owners; 2) to cooperate with tax service providers and CPA firms who work with small businesses to assist in education and awareness of tax credits and incentives; and, separately, 3) to ask the SBA Office of Advocacy to step up and do more to educate small and medium business owners on the tax credits and incentives for which they may be eligible. Such education will go far in ensuring that the tax credits and incentives put in place by Congress actually achieve the policy goals that were intended.

5. IRS Examination and Audit

Mr. Chairman, it is important for the Committee to understand as it considers tax reform— the shadow cast on small business owners by IRS examination. Unlike large businesses who view an IRS examination as par for the course, for a small business owner an IRS phone call is a source of great

dread and anxiety. The shadow of a possible IRS exam is a key reason some small business owners shy away from taking otherwise available tax credits or incentives –even if the credit or incentive is right-over-the-plate for them to qualify. Therefore – ensuring that IRS examinations are done fairly and professionally goes hand-in-hand with tax reform and ensuring that the tax provisions work for both big businesses and small businesses -- as intended by Congress.

I recognize that the IRS has to conduct examinations and audits – as part of an overall effort to ensure tax compliance. That said, it is possible to improve the manner in which the IRS exams small businesses.

alliantgroup represents hundreds of taxpayers across-the-board – small, medium and large before the IRS in examination and audit. Let me be the first to say that most of the examinations for which we serve as the taxpayer representative – the IRS agent is professional, knowledgeable and courteous and the exam is fair, open and transparent. This does not mean we always agree but at the end of the exam we feel that our client was treated fairly and with respect.

However, we are concerned with what we are increasingly seeing, especially in audits of smaller businesses. Too often the IRS in an audit treats a small business the way it treats large businesses seemingly unconcerned with the burdens of data and document requests. It seems at times, with exams of small businesses the IRS doesn't appreciate the differences with a large business that a small business may have in terms of quality and quantity of record keeping as well as timekeeping. The IRS should not have the same expectations for Exxon as it does for Thibodeaux's Oil and Pump.

Again, I don't want to suggest we see these problems with all IRS agents and small business examinations – but we are concerned. And our concern is only exacerbated by budget declines and the resulting lack of sufficient training, education, and strained staffing.

And, in view of our concerns, it is vital Congress provide fair oversight and have its voice heard in these matters of examination. Congress should pass legislation to strengthen taxpayer rights for both individuals and small business. Senator Cornyn (R-TX) has introduced a thoughtful bill on taxpayer rights for small business that this Committee should review closely and my former boss, Senator Grassley recently introduced legislation on individual taxpayer rights. Both bills have a number of smart ideas – and I'm sure the Committee in its work can add its own set of good proposals - there remains much to be done.

Mr. Chairman and Ranking Member – I just want to touch briefly on some areas in examination of small businesses that we see and find particularly concerning – and am happy to discuss these and other matters in more detail with the Committee staff:

Openness and transparency in an examination. Particularly with examinations of small businesses we see the IRS less open in discussing issues under review. This is not only frustrating for the business owner but hamstrings efforts by the business owner and their tax advisors to be responsive to the material and information the IRS is requesting. In addition, the IRS examiner should keep the taxpayer informed of the progress/status of the exam.

Further – we are seeing agents with less and less authority. Too often the IRS examiner will be relying on “the man behind the curtain” – an IRS expert or technician. That help is provided is fine. However, taxpayers and their representatives are often frustrated in light of our lack of ability to approach and discuss issues with the expert or technical advisor who dominates the case process and is not intimately familiar with the facts of the particular taxpayer. Thus, the IRS technical advisors are at

times, providing advice that is not encompassing the full knowledge of the underlying matter. The taxpayer should be able to talk directly to this expert – rather than engage in a time consuming and frustrating version of “telephone.”

Third party contacts. In the 1998 IRS Restructuring Act Congress sought to rein in third party contacts. The then-Chairman of this Committee Senator Bond (R-MO) wrote to the IRS Commissioner Rossotti on February 25, 1999 about this provision -- concerned that IRS was improperly harassing small business owners with third party contacts (ex. contacting clients, business partners):

Our intent in enacting this provision was that the taxpayer should have the opportunity to provide information requested during an examination before the IRS turns to any third party. In addition, once the IRS determines that such information can only be obtained from third party parties, the taxpayer has a right to reasonable notice concerning the third parties that the IRS needs to contact and to receive such notice before the inquiries are made.

In representing small business clients, we are seeing extensive third party contacts. These third party contacts do not appear to be done as a last resort or because the taxpayer has refused to provide information. Instead the IRS uses the rubric of “verifying” what the taxpayer has stated. This is done even in cases where there is no evidence to suggest that the taxpayer is incorrect and is done without giving the taxpayer a chance to address an IRS question). The end result can be devastating to the business of the taxpayer -- as business partners and clients are contacted by the IRS. I would encourage the Committee to ask the Taxpayer Advocate her views on the IRS actions in this area – and recommended reforms.

FOIA. Like many agencies – the IRS is not setting speed records on responding to FOIAs. In some cases this may reflect a need for additional budgetary support. FOIA is often a key way for a taxpayer to understand fully the areas of concern in an IRS examination.

Fast-Track Process. Fast track has been a wonderful vehicle for large businesses to resolve tax issues with the IRS quickly and at low cost. This mechanism should be applied to small businesses as a way to expedite matters and in an effort to reach amicable resolutions of examinations. I would suggest the Committee ask the IRS and the Taxpayer advocate for a review on this matter and steps to make certain that fast-track is uniformly available to all manner of taxpayers so it can be a real benefit for small businesses – not just big business.

I close this discussion by noting that the vast numbers of small business owners want to comply with the tax laws (and yes there are certainly bad actors out there that IRS should focus on).⁸ Further, tax practitioners want to make the road as easy for their clients as possible with the IRS. There is much that can be done to encourage compliance with greater cooperation and best practices between the IRS and tax practitioners.

Mr. Chairman, as stated earlier – getting small business owners in a better place in relation to the IRS and examination and audit is critical if the Congress is going to see tax reform work for small businesses. There is much that needs to be done and much good that can be realized but it will take Congress – and this Committee – showing the leadership necessary to make improvements in IRS examination of small businesses.

Conclusion

Thank you Mr. Chairman Vitter and Ranking Member Shaheen – alliantgroup prides itself on being a voice for small and medium businesses and we are happy to assist the Committee in its work.

⁸ The Committee might consider asking the IRS to review the SBA Office of Advocacy [Report](#): “An Examination of the 2001 IRS Tax Gap Estimates’ Effects on Small Businesses,” March 2011 – which raises questions about the focus on small businesses and the tax gap – particularly in relation to examination and audit priorities.