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From: [REDACTED]

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To: [REDACTED]

Cc:

Bcc: [REDACTED]

Subject: RE

Hello all –

I agree that the information below is not directly on point, but it does reflect the guidance counsel generally provides with regard to statistical or aggregate information.

The IRS uses a general “rule-of-three” that grouped return information must include data from at least three taxpayers in order to be statistical. Data from fewer than three taxpayers is not statistical. However, depending on the specific circumstances, three may not be sufficient to mask the identities of the included taxpayers. In that case, when possible we increase the number of taxpayers included in the data until appropriate masking is achieved. If such masking cannot be achieved, then the grouped information should not be disclosed.

The basic question raised [REDACTED] is whether [REDACTED] of a community of [REDACTED] provides sufficient masking. We should consider not only the numbers, but also the extent to which the community members are familiar with each other and therefore reasonably could be expected to recognize/identify any of the specific members included. We are not concerned with whether any taxpayer can recognize itself, but rather whether other people can recognize the taxpayer. Also, if the included taxpayers have already told other members of the community that they were audited, then the fact that the community knows who is included in this number when presented in a slightly different context can mitigate the concern that the number is not statistical.

I talked with one of the Counsel (P&A) folks who worked on the previous report. He doesn't remember any specific discussion of the statistical question, just that taxpayer-specific information had to be removed. He agreed that with such a small community, we should not mechanically apply the rule of three, but should consider whether the number we have is adequate to mask the taxpayers' identities. That judgment is something that needs to be done by the folks who substantively work this project and have the best knowledge of the extent to which the community members are able to recognize each other. If you are comfortable that

the number of taxpayers included is large enough to mask their identities, then it can be disclosed; if you think it is not large enough, then the number should be deleted.

I hope that helps. IF you would like to discuss it further, please let me know.

Senior Attorney

Procedure & Administration