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**Edward J. Black**
*President & CEO*

October 2, 2006

The OMB Unit
SE:W:CAR:MP:T:T:SP
Internal Revenue Service
Room 6406
1111 Constitution Avenue, NW
Washington DC 20224

Re: Comments in response to the notice in the August 3, 2006 Federal Register (Volume 71, Number 149, pages 44075-44080) by the Internal Revenue Service concerning the Paperwork Reduction Act review of Form 1040 and related documents

The Internal Revenue Service provided notice in the August 3, 2006 Federal Register (71 Federal Register 149) of the opportunity to comment "on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ; and all attachments to these forms." The Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) was cited as the statutory authority for this opportunity to comment. The following comments are provided in response to this notice.

<u>Proposed Changes: Significant Improvement</u>

Section 2001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, provides that –

> "It is the policy of Congress that—
> (1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns;
> (2) it should be the goal of the Internal Revenue Service to have at least 80 percent of all such returns filed electronically by the year 2007; and
> (3) the Internal Revenue Service should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns."

The benefits of filing individual income tax returns electronically for government and for individuals are clear. Congress has for several years been able to apply the savings obtained with increased efiling by taxpayers to fund other important IRS activities. The direct benefits to taxpayers from electronic tax preparation and filing are also clear. As the IRS observes in its August 3, 2006 Federal Register notice cited above –

> "... more than 85 percent of all individual tax returns are prepared utilizing computer software, either by the taxpayer or a paid provider, and less than 15 are prepared manually."

Not all of these returns prepared using computer software are filed electronically, however, and the IRS needs to continue to "eliminate barriers [and] provide incentives" for taxpayers to file electronically as the Internal Revenue Service Restructuring and Reform Act of 1998 requires.

Accordingly, we appreciate and endorse the added attention the IRS has given to their responsibility to "eliminate barriers [and] provide incentives" to promote electronic tax preparation and filing in the Federal Register notice of August 3, 2006 on the Paperwork Reduction Act request concerning the 1040 family of forms. We agree with the observation by the IRS in this August 3, 2006 Federal Register notice that –

> "... electronically prepared and e-filed returns have fewer errors, implying a lower overall post-filing burden."

We especially appreciate the change in the critical discussion of the burden that this information collection request would impose. The burdens are huge: 134 million taxpayers will use these forms; they will collectively spend 3.18 billion hours annually in preparing and filing these forms; and their out-of-pocket expenses will be $26.5 billion annually. These numbers underscore the importance of what the Paperwork Reduction Act requires:

> " ... a specific, objectively supported estimate of burden."[1]

We support Table 1 in the August 3, 2006 Federal Register notice that summarizes the Taxpayer Burden Estimates required to be prepared by the IRS and submitted for public comment and approval by OMB. We are pleased that this Table will be used instead of the table used in the 2005 1040 Instructions with which we had serious problems and which will be discussed briefly hereinafter. We believe that this table in the August 3rd notice enables the IRS to set forth what it believes the 1040 form burdens are without imposing barriers and disincentives to the electronic preparation and filing of individual tax returns.

<u>Past Implementation: Significantly Flawed</u>

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[1] 44 U.S.C. 3506(c)(1)(A)(iv)

If, on the other hand, the IRS intends to continue to use or publish the table in the 2005 1040 Instructions or any similar table in conjunction with this collection of information, then we oppose such use or publication and urge the IRS and the Office of Management and Budget to take such action as will prevent such use or publication.

We would oppose the use or publication by the IRS of a table like that in the 2005 1040 Instructions because it is inaccurate, misleading, unsupported and unsupportable and because it undercuts important public policy goals, including those statutory provisions that encourage the efiling of individual tax returns.[2]

Because the burden table in the 2005 1040 Instructions is so flawed, it runs afoul of several statutory programs including

- the Paperwork Reduction Act of 1995 (the "PRA") requires that " … each agency shall … improve the integrity, quality, and utility of information to all users …."[3]
- the Information Quality Act of 2000[4] (the "IQA") and the guidelines[5] issued by the Office of Management and Budget (the "IQA guidelines") "… for ensuring and maximizing the quality, objectivity, utility, and integrity of information … disseminated by Federal agencies …."[6]
- the requirement that "each agency shall … review each collection of information before submission to the Director [of OMB to ensure] a specific, objectively supported estimate of burden …."[7]
- "… each collection of information submitted to the Director [of OMB] for review under section 3507 … [each agency] shall certify (and provide a record supporting such certification …) that each collection … is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond."[8]
- "… each collection of information submitted to the Director [of OMB] for review under section 3507 … [each agency] shall certify (and provide a record supporting such certification …) that each collection … contains the statement required under paragraph (1)(B)(iii) [of §3506(c)]."[9] (This "statement" "…

[2] §2001(a), Title II, Internal Revenue Restructuring and Reform Act of 1998, Public Law 105-206

[3] 44 U.S.C. 3506(b)(1)(C)

[4] §515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), included as a Note to 44 U.S.C. §3516

[5] "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies", Office of Management and Budget, Federal Register, Volume 67, No. 36, February 22, 2002, pages 8452 - 8460

[6] §515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), included as a Note to 44 U.S.C. §3516(a)

[7] 44 U.S.C. 3506(c)(1)(A)(iv)

[8] 44 U.S.C. 3506(c)(3)(D)

[9] 44 U.S.C. 3506(c)(3)(G)

informs the person receiving the collection of information of … an estimate, to the extent practicable, of the burden of the collection."[10]

- "[A]n agency shall not conduct … the collection of information … unless … the agency has published a notice in the Federal Register … setting forth … an estimate of the burden that shall result from the collection of information."[11]

The burden table on page 79 of the 2005 1040 Instructions under a heading "Estimates of Taxpayer Burden" is entitled "Estimated Average Preparation Times and Out-of-Pocket Expenses by Return Preparation Method." It includes three columns setting forth the estimated average hours and the costs of completing and filing IRS Form 1040 for Nonbusiness and Business filers using various Schedules for three return preparation methods. The three preparation methods (and the titles of the three columns) are: "Self-Prepared Without Tax Software"; "Self-Prepared With Tax Software"; and "Prepared by Paid Professional."

Counterintuitively, the table sets forth data that indicates that it takes less time and costs less to prepare and file Form 1040 without using tax software than it does using tax software. It turns out there are reasons for these unexpected results.

First, the Forms and Schedules used in the calculation of hours and costs when the taxpayer does not use tax software are different than the Forms and Schedules used in the calculation of hours and costs when the taxpayer does use tax software. In other words, the table displays to taxpayers data on apples and oranges without any explanation that it is doing so. Respondents can only conclude from the IRS dissemination that it is less burdensome and less costly to prepare and file paper returns than to file electronically using tax software.

Second, while the 2005 Instructions state that the data in the burden table " ,,, are based on a new survey of taxpayers …", the survey is not new. This "new" survey was conducted in 2000. While the Forms and Schedules may not have changed much since 2000, tax software definitely has. The competitive tax software industry annually offers significantly new and more efficient software. A survey used to calculate burden in 2006 based on tax software produced in 2000 is not "new" and it is not accurate or relevant to tax software costs and burdens in 2006.

Third, this survey does not exist. Apparently, the survey was destroyed for privacy reasons. Unfortunately, this prevents the review, analysis or understanding of the legitimacy of this survey and the data from it.

And fourth, what results remain of this survey are not set forth in the burden table in the 2005 1040 Instructions. Instead, the data in the 2005 table is an "extrapolation" of the remaining information from the 2000 survey to make the information more relevant today, in part due to the many tax law and regulatory changes that have occurred since

[10] 44 U.S.C. 3506(c)(1)(B)(iii)(III)

[11] 44 U.S.C. 3507(a)(1)(D)(ii)(V)

2000. Since the extrapolation would be of answers to questions asked in 2000 concerning burdens and efficiencies of tax preparation software in 2006, this extrapolation borders on the metaphysical.

For these reasons, the burden data that purports to support the burden table in the 2005 1040 Instructions is inaccurate, misleading, unsupported and unsupportable and totally fails to meet key statutory requirements of the Paperwork Reduction Act including the requirement for "a specific, objectively supported estimate of burden."

Summary and Conclusion

As we read the IRS Federal Register notice of August 3, 2006 providing an opportunity to comment on the information collection request for the 1040 family of forms, this 2005 table will be replaced by the table set forth in the August 3rd notice. As stated previously, we support this change and believe that it will help to "eliminate barriers [and] provide incentives" for the increased electronic preparation and filing of individual taxpayer returns as required by the Internal Revenue Service Restructuring and Reform Act of 1998.

We do suggest, however, that the IRS begin now to undertake the process of investing in new, redesigned survey research for use in the future analysis and reporting of taxpayer burden estimates for the 1040 family of forms. This is necessary to replace the shortcomings of the existing data, including the continued extrapolation of work originally done over five years ago and which is significantly outdated in terms of the advances during the intervening period of electronic commerce, technology innovation and rapid consumer adoption of new products and services. The design for such new survey research should first be noticed for public comment as to its substantive focus, target audiences, survey design, and analytical methodology.

We appreciate the opportunity to comment on this important issue.

Sincerely,

Ed Black

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President & CEO
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Edward J. Black
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June 2, 2006

Mr. Donald R. Arbuckle
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
725 17th Street NW
Room 10201
Washington DC 20503

Dear Mr. Arbuckle:

I am writing to bring to your attention a matter central to the mission of the Office of Information and Regulatory Affairs (OIRA).

A significant part of the responsibility of OIRA is to ensure the practical utility of government information collection and reporting requirements, and paperwork burden analysis, under the authority of The Paperwork Reduction Act.

Likewise, the issue we are raising by this letter is of great importance to faithful execution of another statutory mandate: to increase the electronic filing of individual income tax returns as the preferred method of Voluntary Compliance with the US income tax system, as stipulated by the 1998 IRS Restructuring and Reform Act.

We urgently request OIRA action and review of the matter we raise here today before the public interest purposes of both statutes are further undermined by misguided and seriously flawed activities of the taxpayer burden statistical estimating and analysis work of the IRS.

The issue at hand is the IRS research, analysis and publication of tables purporting to provide useful information to the American public about taxpayer compliance burdens created by the requirement for citizens to complete and file income tax forms under IRS authority.

As you know, the use of electronic filing instead of paper forms saves the taxpayer substantial time and effort, increases tax return accuracy, and saves the IRS substantial budgetary dollars by processing these electronically filed returns instead of paper returns. The comparative error rate alone represents orders of magnitude of difference, with electronic returns having an error rate of about 1% compared to paper returns with an error rate of 20%.

The savings resulting from electronic tax preparation and filing have been extensively studied and well-documented by Presidential Commissions, Congressional Committees, Executive agencies, GAO, academics and economists. The savings being generated by the growth of electronic tax filing, which now encompass more than 50% of all individual income tax returns, are already in the many millions of dollars, and these savings are growing as e-filing increases.

Indeed, the case for reduction of burden, reduction of errors and reduction of costs was so compelling that the 1998 Internal Revenue Reform and Restructuring Act established a goal of having 80% of returns filed electronically by 2007 in order to direct IRS e-filing program efforts.

It has therefore been stunning to see the IRS publication of taxpayer burden estimates that show in comparative table form that the completion and filing of paper returns is the least burdensome method for tax compliance. These tables were published this past tax season in the 1040 tax booklets by the IRS, and the Service has recently reported that they intend to do it again in the agency's publications for next tax season. Indeed, we bring this matter to your attention with great urgency because of the intention of the IRS to submit these tables to the printer for publication during the month of June.

The tables of which we speak were designed by the IRS for the use of taxpayers. However, based on our analysis, these IRS burden estimate tables are fatally flawed, providing incomplete, misleading, inaccurate and unsubstantiated information. As such, the burden estimate reporting by the IRS lacks all practical utility and is destructive to the public interest purposes of both the Paperwork Act and the IRS Restructuring and Reform Act of 1998.

The most troublesome burden estimate information issued by the IRS consists of a table presenting the comparative costs of paper filings as against the costs of returns prepared using tax preparation software and against the costs of using a professional tax preparer.

The subject IRS table explicitly shows that the costs and burdens of completing and filing paper tax returns are far less than those for preparing and filing returns electronically, the cost and burden of which is reported in the table as being much higher.

It turns out there are several reasons for this anomalous report by the IRS according to the oral disclosures of the agency's statistical research division in the course of several meetings with the private sector since the tables first appeared in the 1040 tax booklets last January.

First, the individual income tax return or returns prepared and filed using paper forms are different from the individual income tax return or returns prepared and filed electronically for the purposes of the comparison table. The table, in other words, displays information on apples and oranges. Indeed, without so labeling the printed table, the statistical and research division contends that it was implied and self-evident that the relative burdens of the returns portrayed in their table "obviously" differed progressively by degree of complexity among the various modalities of tax preparation portrayed in the table, and that the tables were never meant to be read across the data fields as being comparable.

However, there was no explanation provided to taxpayers in this year's published 1040 booklets to indicate that the returns in the table differed by other than modality of preparation. Indeed on its face, the only rational conclusion a reader could reach was that the table plainly meant that paper preparation and paper mailing of a tax return was decisively to the taxpayer's advantage. And, unfortunately, that is exactly what the news media read and interpreted from the tables, and reported with dramatic headlines in news stories from coast to coast throughout the entire tax season.

The fact that the returns used to calculate the IRS comparative burden estimates were not in fact the same or even similar was a detail that was not disclosed in the 1040 booklets. and was not even admitted by the IRS until after publication, and only then when the logic and practical utility of the tables were challenged by the private sector in face-to-face meetings.

Second, this year's 1040 booklets explicitly state that the IRS taxpayer burden estimates and table are based on "new" survey research. This is a false and misleading statement by any reasonable measurement.

In fact, the table is based on surveys conducted in the year 2000 and tabulated in the year 2001, according to after-publication oral admissions of the office of statistical research at the IRS.

The term "new" can only accurately be applied to describe this research if it is used in the same long-term temporal manner used in applying the term "new" to the "New" Testament of the 2000 year old Christian Bible -- in contrast to the even older "Old" Testament of the same Bible. Of course, as a statement of reality, neither are "new" and both are ancient scripture.

Third, the IRS table isn't even a direct reporting of the old "new" research it purports to present at all.

In fact, it was admitted by the IRS after publication that the information in the table is, in its entirety, "an extrapolation" derived from data from the original research, in an effort to make the information collected six years ago appear relevant to the present day.

Fourth, there is no data.

The original survey research conducted six years ago, that is now being extrapolated to form these current burden estimates, no longer exists.

The IRS has stated, again after publication, that the original survey-generated information it claims would support the conclusions in the table was destroyed to ensure the privacy of the year 2000 survey participants, and the original source data is no longer available for review, analysis, understanding or disclosure.

Fifth, the IRS has acknowledged that the (now destroyed) information on which the table extrapolations are allegedly based has been adjusted to take into account the many changes in tax law, forms, technology, and tax preparation products and services, since the original research was conducted. These adjustments apparently include such changes as the dramatic year-over-year innovations achieved in the efficiency and convenience of tax preparation software and its features and functionality since 2000, including the onset of universal availability of highly simplified online tax preparation software web-hosted services which were in their infancy in 2000. Those services today range from low-cost to no-cost -- including the government's own Free File Alliance program which did not exist when the IRS original research was conducted.

Similarly, another highly relevant example of a major burden reducing technology not commonly available in the marketplace in the year 2000 is the web-based automatic and instantaneous downloading of W-2 and 1099 personal and financial data into electronic tax returns, rather than taxpayers typing in all that data themselves. Again, such services were not even generally available in the marketplace in the year 2000.

In this regard, the IRS statistical research division has strongly emphasized that the original survey research was based on questions -- which they have thus far also refused to disclose -- meant to elicit real taxpayer burden experiences in the process of preparing and filing tax returns. As such, it is difficult to comprehend how the IRS is now extrapolating what survey respondents would have said about their use of new burden-reducing technologies had they known about them and used them -- but which they not only never used but also had not even imagined. Such super-extrapolations make this exercise a work of fiction, with neither practical utility nor relevance.

Sixth, in addition to structuring their comparative analysis using different kinds of returns as well as different tax preparation and filing methodologies, the IRS statistical research division also arbitrarily included and excluded different elements of what they classified as "burden".

Specifically, the researchers informed industry this year that they included in the software burden estimate the time and cost involved in using each and every tool, option, explanatory video, financial planning utility and estimating sub-program included in tax software programs, justifying this on the basis that software includes a lot of "bells and whistles".

However, the kind of discretionary personal effort involved in using the supplemental financial planning, tax planning, retirement planning, professional advice videos, what-if scenarios, and other advanced tools available in tax software represents time-saving, burden-reducing personal and family financial management tools which are wholly voluntary and discretionary. As such they are not relevant to estimating the essential paperwork compliance burden of completing and filing federal forms which are imposed by government and required by law.

And indeed, IRS informed industry that they counted no such comparable time and "burden" for such personal and family financial management work effort by people who use paper and pencil forms. Indeed, this major discrepancy is one of the biggest differentials in the comparative time and cost burdens displayed in the table. And once again this vital information was not disclosed in the published tables. And yet, once again, the tables compared apples to oranges.

Seventh, perhaps one of the biggest sources of concern about this IRS work is the true nature of what we're looking at in these tables. This is not a comparison of how long it takes to complete and file forms using different modalities. Nor does it take into account any time or value of money for dealing with the many significant residual issues from tax returns after the forms are filed -- which has a much higher rate of burden for error-prone paper returns than for electronic software-based returns. Instead, this table compares current benchmark market prices for commercial services versus the time usage of free paper and pencil forms.

The fundamental flaw in that kind of comparison -- beyond the fact that tracking and reporting the market pricing of commercial products and services is not part of the mission or charter of the Internal Revenue Service -- is the susceptibility for gross distortion of Paperwork Reduction Act data as new products, services and business models emerge in software and electronic commerce.

One of the trends in the software and web-based products market has been new pricing models based on "free" -- including the government's own Free File program.

In a free business model, does it make any sense that a price-based paperwork burden estimate for completing and filing tax forms would effectively become "zero"? Is that the meaning of measurement of information collection and reporting burden that was ever contemplated in The Paperwork Reduction Act?

We submit that such an approach renders meaningless the effort to measure true burden imposed by government information collection requirements. Over time, such an approach would eviscerate the public protections intended in the creation and legislative history of the Act, as envisioned from its earliest inception.

Eighth, when the private sector requested that IRS withdraw this year's flawed tax tables, the IRS statistical research division refused, stating that they were required under OMB direction to publish these tables and had no choice in the matter. When industry challenged this on the grounds that the tables had no practical utility under the meaning of the Paperwork Act, and therefore could not have been directed to be published in this manner by OIRA, the representatives of the statistical research division asserted that the publication of the tables was a matter of Administration policy and that in their action to refuse to withdraw them they were acting at the direction of the President of the United States.

The absurdity of the IRS burden estimate tables and the gross errors and failures which they represent raise questions about whether any OIRA approval under the Paperwork Reduction Act, and the Data Quality Act, as well as sound public policy, and the 1998 IRS Reform and Restructuring Act, was based upon valid information.

The offending table appeared in the publications and instructions issued by the IRS for tax year 2005. We understand that the same table or a very similar one is planned for use in 2006 also. It is further understood that such tables will once again be based on the same research methodology, analysis, year 2000 data, and extrapolations. The printing of these publications and instructions for 2006 is imminent, indeed the IRS tables go to the booklet printer in June.

Accordingly, we urgently request OIRA and OMB to intervene under its PRA Authority to prevent a repeat of this serious problem. We recommend that the table simply be deleted from the 2006 publications and that the IRS undertake a modern study that avoids the serious shortcomings of the current table.

Sincerely,

Ed Black

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President & CEO
CCIA

*About CCIA*
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