



## **DEPARTMENT OF THE TREASURY OFFICE OF PUBLIC AFFAIRS**

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### **Written Statement of Jesus H. Delgado-Jenkins Acting Assistant Secretary for Management**

#### **Before the Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs and The Small Business Committee on Regulatory Reform and Oversight**

##### **Introduction**

Chairman Ose and Chairman Schrock, Members of the Subcommittees, thank you for the opportunity to testify on the Department of the Treasury's implementation of the Small Business Paperwork Relief Act of 2002.

My name is Jesus Delgado-Jenkins, Acting Assistant Secretary for Management. I joined the Treasury Department in May of 2003 as a senior advisor, and served as Deputy Assistant Secretary for Management and Budget from October of 2003 until I was named Acting Assistant Secretary for Management this past February. As Acting Assistant Secretary, I report to the Deputy Secretary, and I am responsible for managing the Department's budget, emergency preparedness, Treasury headquarters operations, human resources, financial management, and other various management responsibilities for the Department.

Before beginning my service to the Department, I worked for a number of years in the private sector. Prior to my federal service, I was an entrepreneur in a small start-up business. I fully appreciate the challenges small businesses face every day in complying with the myriad of federal, state, and local regulatory requirements. My experience in business has demonstrated to me time and time again that time is money. Doing business with the federal government should not waste the precious resources of either the government or small businesses, which can least afford to deal with unnecessary process steps and red tape. In addition, if small businesses cannot readily find the information they need to comply with the laws, or readily seek relief if appropriate when penalties are imposed, their government has not served them well.

The Treasury Department works to impose the least amount of burden necessary for small business owners to meet their obligations to the government, whether they are tax obligations, or other regulatory requirements. Secretary Snow has spoken numerous times about small businesses operating as the backbone and the engine of our economy. I could not agree with that more based on my own experiences in business. Small businesses are the essence of the American entrepreneurial spirit.

From a Departmental standpoint, IRS actions represent the vast majority of enforcement actions taken that involve small entities. The IRS defines small businesses as all business entities (corporations, partnerships, and sole proprietorships) with net assets below \$10 million. Penalties imposed on small businesses by the IRS and the Alcohol and Tobacco Tax and Trade Bureau account for most of the penalties assessed against small businesses by the Department of the Treasury as captured in the reports filed with Congress in January and March of this year. The Office of Foreign Assets Control, the Office of the Comptroller of the Currency, and the Financial Crimes Enforcement Network account for a relatively small number of penalties.

### **Requirements of the Small Business Paperwork Relief Act**

As requested in your invitation to testify before the Subcommittees, I would like to add  the Treasury Department's compliance and implementation of the Small Business Paperwork Relief Act of 2002.

- **Establishment of an Agency Point of Contact:** The Treasury Department's single contact is posted as required on the OMB website. This individual is the Director of the Office of Small and Disadvantaged Business Utilization, and reports directly to the Deputy Secretary. The Department's page on the OMB site also includes an IRS contact to facilitate small businesses finding the resources they need with respect to fulfilling their tax requirements. The Department believes that this additional resource helps taxpayers find what they need more quickly. However, if a taxpayer contacts the Treasury single-point-of-contact, this office is able to properly refer the taxpayer to the appropriate IRS office, or other office within the Treasury Department to best meet their needs. While we have found that customers use a number of channels to communicate and get the information they need, we believe the single-point-of contact is a useful option for customers who do not know where to turn for information. I will point out that the Treasury web portal, which provides information on small business contracting, is active, logging some 16,000 visits in the 2<sup>nd</sup> quarter of this year
- **Compliance Assistance Resources:** Resources to specifically help small businesses understand their obligations and more easily comply with requirements are posted on the Internet, including information on the Department's efforts to reach out to small businesses who want to do business with the Treasury Department. The IRS devotes resources to specifically helping small businesses understand their requirements and comply, helping them avoid late or non-filing penalties
- **Regulatory Enforcement Reports to Congress:** IRS sent a report to Congress on January 12 and the Department sent a report on March 5 containing the required information relative to the number of total enforcement assessments, abatements, and dollar values for all entities and for small businesses. We regret that these reports were late in being sent to

Congress. I will work to ensure that the final Treasury report is submitted on time this year.

### **Internal Revenue Service**

As was reported to the Committee by IRS Commissioner Everson in January of 2004, the IRS abated 1.7 million of 15 million assessments last year, or about \$1.8 billion of a total of \$5.5 billion in penalties assessed against small businesses. As I examined these statistics in preparation for this hearing, I was struck by the large portion of overall penalty assessments attributed to small businesses—15 of 23 million total assessments (by number of tax modules). For this reason, I asked for additional data from the IRS to help me better understand these statistics, to examine the story behind the numbers. In short, these numbers reflect the fact that small businesses account for about 33% of all taxpayers and make up about 66% of all tax filings (including income tax returns and information returns). A small business, and indeed any business with employees, is required to file not only an annual tax return, but 5 employment tax returns, W-2 information reports, and to make regular federal tax deposits. Every time one of these is filed, there is an opportunity for the small business to make a mistake, increasing the potential for small businesses to be exposed to a penalty for not filing, for filing late, or for not paying on time. These facts help to explain the number of penalties assessed against small businesses. The IRS knows that most of the penalties assessed against small businesses (by tax module) relate to failure to file tax returns in a timely manner (failure to file), and failure to deposit employment taxes (failure to deposit) in a timely manner. The following discussion relates to the assessment and abatement of these particular penalties.

In general, the Internal Revenue Code authorizes the IRS to abate a penalty for the failure to file or the failure to deposit when a taxpayer can demonstrate that non-compliance was due to reasonable cause. The existence of reasonable cause depends on the facts and circumstances of each particular case. There are situations in which a small business may be able to demonstrate reasonable cause while a large business would not be able to do so. For example, depending on the circumstances, the illness of the owner of a small business may constitute reasonable cause for non-compliance, while the illness of the CEO of a larger business more likely would not constitute reasonable cause.

The IRS Commissioner testified in April of this year regarding activities in the IRS Office of Taxpayer Burden Reduction and their aggressive implementation of burden reduction initiatives to significantly reduce the number of hours a small business needs to comply with the tax laws. You have heard about the many electronic service initiatives that take paper out of the process and ease both information reporting and the payment of taxes. Providing for the electronic filing of quarterly 941 returns and annual 940 returns I believe reduces burden on small businesses by providing more filing and payment options, including a federal-state filing component. Corporate returns and Exempt Organization returns are also being added to the electronic filing inventory of services. Providing electronic options reduces the paperwork and eases compliance headaches.

While the IRS has a long way to go, I believe they have a number of initiatives which are reducing the burden and hopefully making life easier for small business taxpayers.

For employment tax periods (Forms 941) beginning January 1, 2001, IRS began to systemically waive the entire Federal Tax Deposit (FTD) penalty charge on the first tax period following a change in the FTD deposit requirements. Taxpayers receive notification of the FTD penalty waiver via an IRS notice. For deposits required to be made after January 18, 1999 under the IRS Restructuring and Reform Act of 1998, penalties are waived on the first deposit a taxpayer is required to make after a required change in the frequency of payroll deposits. The IRS made an administrative decision, which is a good one, to abate the entire penalty for the first quarter following a change in an employer's deposit requirement.

For tax periods beginning January 1, 1999, IRS began to systemically waive the entire penalty for first time depositors of employment taxes. In addition, beginning in January 2004, IRS began issuing a notice on the 1<sup>st</sup> quarter return, to inform monthly deposit taxpayers who had a change in tax deposit frequency (e.g., required to deposit more frequently) that they may have made a mistake. Although the penalty will be systemically waived in the first quarter, the early notification will inform the taxpayer in enough time to deposit correctly for the second quarter filing.

For return periods beginning January 1, 2001, the systemic tolerance waiver was increased from \$100 to \$250, and the de minimis threshold for depositing from \$1,000 to \$2,500. This means that a business entity that accrued \$2,500 or less in quarterly Federal Tax Deposits would not be required to make a deposit but would be able to pay when filing the tax return.

IRS is working on an initiative that would allow small business entities to file the quarterly employment tax return (Form 941) on an annual basis. This option would be available for taxpayers who owe less than \$2500 in total tax liability quarterly, demonstrate compliance for eight consecutive quarters, and use the electronic federal tax payment system.

IRS is also offering a one-time Federal Tax Deposit penalty refund incentive to business taxpayers who are not required to use the Electronic Federal Tax Payment System but elect to use the system.

Treasury believes these are steps in the right direction toward reducing burdens on small businesses, as well as reducing the potential for penalties for non-compliance.

### **Alcohol and Tobacco Tax and Trade Bureau (TTB)**

The Alcohol and Tobacco Tax and Trade Bureau is the newest agency in the Department of the Treasury, but its functions are not new. The Homeland Security Act of 2002 divided the functions of the former Bureau of Alcohol, Tobacco, and Firearms into two new organizations with separate functions. The Act created a new Alcohol and Tobacco Tax and Trade bureau within the Department of the Treasury, and shifted other law enforcement functions of ATF to the Department of Justice.

Under Administrator Art Libertucci's leadership, TTB enforces and administers the laws governing the production and distribution of alcohol and tobacco products. TTB collects alcohol, tobacco, firearms and ammunition excise taxes; collects occupational taxes on

producers, wholesalers, and retailers of alcohol beverage products as well as producers of tobacco products and cigarette papers and tubes and export warehouse proprietors; ensures that alcohol beverages are labeled, advertised, and marketed in accordance with the law; and administers the laws and regulations in a manner that protects the revenue, protects the consumer, and promotes voluntary compliance.

TTB's revenue collection program uses analysis to target non-compliant industry members and establishes a presence within the industries that encourages voluntary compliance, which is key to collecting some \$15 billion annually.

TTB has compliance assistance resources established to assist small businesses in complying with the statutes and regulations TTB enforces. TTB issues guidance through various publications such as industry circulars and rulings, private letter rulings issued to individual entities, website links that answer frequently asked questions and provide guidance, industry seminars, and taxpayer hotlines. TTB also offers guidance by telephone, mail, and email to small business taxpayers. The TTB National Revenue Center responds to approximately 80,000 taxpayer calls per year.

TTB also maintains an automated late return reporting system that notifies taxpayers of a late-filed return or insufficient payment, helping taxpayers resolve problems early to avoid additional penalties and interest. TTB also sends out yearly notices to remind taxpayers of their filing and payment responsibilities.

TTB assessed over 16,000 civil penalties last year, waiving or reducing 1135 of them. Of the 1135 waived or reduced, 1093 (96 percent) of those involved small entities. TTB collects taxes, assesses penalties, and abates penalties as authorized by the Internal Revenue Code. As with the IRS, TTB is authorized to abate penalties based on reasonable cause criteria. In determining whether a failure to file or pay was due to reasonable cause, TTB considers whether the taxpayer demonstrated ordinary business care and prudence, or whether unusual circumstances prevented the taxpayer from complying.

As reported in the Treasury report to Congress in March of 2004, of the 16,289 penalties assessed by TTB last year, almost all of them were against small businesses. According to TTB, the high percentage of enforcement actions involving small entities is due to the fact that the vast majority of TTB taxpayers are small entities. TTB has approximately 345,000 Special Occupational Tax taxpayers, most of which are small businesses, as well as approximately 5,000 excise taxpayers, most of which are also small businesses. While there is some overlap, about 99% of all TTB taxpayers are small business Special Occupational Tax taxpayers, who consequently are responsible for the great majority of the delinquencies. TTB advises that the reason more penalties were not waived is due to the fact that the taxpayer did not request a waiver, or the taxpayer could not demonstrate reasonable cause, which is the only authority TTB has to waive a failure to file or failure to pay penalty. It may also be due in part to the fact that penalties assessed against Special Occupational Tax taxpayers averages only \$68.75, which is roughly equivalent to a speeding ticket.

While TTB maintains an active outreach program in promoting its compliance assistance resources, and TTB taxpayers have relied on them heavily, TTB is currently assembling

information on those resources to send to OMB for formal publication in the Federal Register and on its website.

### **Conclusion**

Chairman Ose, Chairman Schrock, in conclusion, I believe that the Department continues to demonstrate progress in balancing compliance and service with burden reduction on small businesses. As the Department's largest interface with small businesses, the Internal Revenue Service is doing great work on a number of fronts to reach out with information and assistance to small businesses to help them navigate the complex requirements of the tax code. Reducing tax law complexity is one key to reducing the burden on small businesses, and will go a long way toward truly reducing the burdens of complying.

For now, the Department is looking at the recommendations of the Small Business Paperwork Relief Act Task Force Report of June 2004. I believe we can do a better job of providing waiver information to small businesses who may have been penalized for the first time. The Department has just hired a new small business director with extensive experience in the small business arena, who will be looking into ways the Department can better reach out to small businesses who want to do business with us. Finally, I believe we can always learn more about customer needs and the market environment in which our customers live and work. I learned this first hand in working with companies to improve their market share and more effectively market their products.

We can use this information more effectively to reach out to provide small businesses with the information they need from us, and to let them know about the resources available to them.

I thank the subcommittees for the opportunity to testify on this important topic and to hear first hand your guidance in this area. I would be happy to respond to any questions you might have.