



May 11, 2015

Dear Mr. Mazur:

As you will recall, we recently met with you to discuss various egregious tax abuses in which private equity firms engage. One of those abuses was the so-called “management fee waiver,” pursuant to which private equity managers claim capital gains taxation on their salary income simply by inserting a few “magic words” that have zero economic effect in the fund’s limited partnership agreement. You indicated that guidance on this would be forthcoming by June 30 at the latest.

We were heartened to read in the tax trade press that, on April 29, 2015, Clifford Warren, special counsel to the IRS associate chief counsel (passthroughs and special industries), confirmed that fee waiver guidance was a very high priority for Treasury and the IRS and that the guidance would be issued “in a matter of months.” We also were happy to hear that the guidance would focus on the whether fee waivers result in “significant entrepreneurial risk,” which we believe is the correct standard and one that very few fee waivers, if any, can satisfy.

On the other hand, we are concerned that there remains some uncertainty as to the proper effective date. Mr. Warren was quoted as saying that the effective date “would be a product of where the government comes out on some of the final calls in the guidance yet to be made.” We believe that the guidance that will be promulgated simply confirms the correct interpretation of I.R.C. Section 707(a)(2)(A) and, accordingly, that its effect should be retroactive. If the guidance somehow had only prospective effect, it would amnesty all of the years of tax abuse, for the benefit of some of the wealthiest people in the United States (who, as you know, already benefit from the carried interest tax break). Fee waivers have been used by the private equity industry for at least 15 years. Even if the guidance is retroactive, due to the 3 year statute of limitations only 20% of those years would be subject to audit.

After finally addressing the fee waiver tax abuse after all of these years, the least the IRS can do is to vigorously enforce the law for all open years. Anything less would accurately be described as a tax amnesty program for billionaires.

Sincerely,

Eileen Appelbaum, Center for Economic and Policy Research  
Lisa Donner, Americans for Financial Reform  
John Keenan, AFSCME  
Heather Slavkin-Corzo, AFL-CIO