



January 28, 2019

The Honorable Steven T. Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**Re: Penalty Relief Needed for Taxpayers for 2018 Filing Season**

Dear Secretary Mnuchin and Commissioner Rettig:

The American Institute of CPAs (AICPA) urges the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) to provide additional and more extensive relief to taxpayers who were unable to adjust their withholding and estimated tax payments for the 2018 tax year due to the changes resulting from Public Law No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA). We appreciate the relief provided in [Notice 2019-11](#); however, the substantial uncertainty surrounding the implementation of TCJA and the updated federal tax withholding tables presented a challenge for many taxpayers in understanding and accounting for their tax liability.

The enactment of TCJA instituted a major reform of the Internal Revenue Code (IRC) affecting millions of individual taxpayers. Due to the array of changes brought forth by TCJA and the need for extensive regulatory and administrative guidance, many taxpayers were unable to accurately calculate their tax liability for the 2018 taxable year. Additionally, as part of the implementation of TCJA, the IRS adjusted the withholding tables resulting in lower withholding. However, the adjusted withholding tables did not account for factors such as the elimination of the personal and dependency exemptions or reduced itemized deductions. As a result, taxpayers may have inadvertently under-withheld their taxes and potentially face penalties. Additionally, limited IRS staff were working on TCJA implementation during the government shutdown, leaving many tax forms and instructions still in the “draft” stage.

**BACKGROUND**

Taxpayers are generally required to make payments of estimated federal income taxes. In order to avoid failure to pay estimated tax (“underpayment”) penalties, individuals, with limited exceptions, are required to pay at least 90% of the tax due for the current year or 100% (110% if adjusted gross income exceeds \$150,000) of the amount of tax shown on their United States (U.S.)

income tax return for the prior year, whichever is smaller. Alternatively, taxpayers with a small tax due of less than \$1,000 receive an exception to the underpayment penalties.<sup>1</sup>

Taxpayers are also required to pay the amount of tax shown on their U.S. income tax return by the tax deadline or the taxpayer is subject to failure to pay (“late payment”) penalties. If the taxpayer can show reasonable cause for not paying on time, the taxpayer may not have to pay the late payment penalty.<sup>2</sup> Historically, the IRS has granted relief to taxpayers that request an extension of time to file their income tax return and pay at least 90% of the taxes owed with the request. Taxpayers must pay the remaining balance by the extended due date.<sup>3</sup>

On January 16, 2019, to provide underpayment penalty relief to taxpayers, the IRS released Notice 2019-11 stating that it would waive the underpayment penalty for individuals who paid, by January 15, 2019, at least 85% of the tax due for the current year. Taxpayers must request this waiver through filing Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*, with their 2018 income tax return.

### **UNDERPAYMENT & LATE PENALTY RELIEF**

The AICPA recommends providing taxpayers additional applicable relief from underpayment penalties and relief from late payment penalties for the 2018 taxable year. Specifically, we recommend taxpayers should receive relief from underpayment penalties if:

- Taxpayers paid at least 80% of the tax due for the current year, or
- Taxpayers paid 80% (100% if adjusted gross income (AGI) exceeds \$150,000) of the amount of tax shown on their U.S. income tax return for the prior year.

Taxpayers should also receive relief from late payment penalties if they timely request an extension of time to file their income tax return and pay at least 80% of the taxes owed with the request.

The relevant statutes of the IRC recognize that in order to make reasonable estimated tax payments, taxpayers require benchmarks to which they can refer. Taxpayers can choose between making payments based on accurately anticipating their current year taxable income or based on their prior year tax liability. Taxpayers faced substantial uncertainties relating to how to determine the amount of their actual tax liability for the 2018 taxable year as regulations addressing many of the statutory changes made by TCJA were not yet available or were released late in the year as proposed regulations or as interim guidance in Notices. In the absence of such guidance, many taxpayers cannot estimate their tax liability for their 2018 taxable year with sufficient certainty to avoid the underpayment or late payment penalty.

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<sup>1</sup> Section 6654. All references to “section” or “§” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §” and “regulations” are to U.S. Treasury regulations promulgated thereunder.

<sup>2</sup> Section 6651.

<sup>3</sup> IRS, IRS Tax Tip 2013-58, “[Eight Facts on Late Filing and Late Payment Penalties](#),” Tip #5, April 18, 2013.

Alternatively, a taxpayer could rely on payments based on their prior year tax liability to ensure avoidance of an underpayment penalty. However, some taxpayers experienced a significant increase of income (such as a lump sum distribution, large capital gains or both spouses working instead of one) and, therefore, an increased tax liability in the prior year. In these circumstances, it is unreasonably burdensome for taxpayers to rely on the prior year tax liability and overpay their current year tax liability.

### **EXPEDITED PROCESS**

Unfortunately, the lower thresholds recommended above will not provide adequate relief for all taxpayers. It is likely that many taxpayers (who exercised care and prudence to meet their tax obligations) are significantly underpaid, yet entitled to relief based on the facts and circumstances of their situation.

The AICPA recommends that the IRS establish an *expedited process* to grant individuals' underpayment and late payment penalty relief for reasonable cause due to the considerable uncertainty surrounding TCJA. Providing penalty relief in a timely manner will provide peace of mind to the millions of taxpayers that have made a good faith attempt at complying with their tax obligations but were nevertheless unable to meet their full obligation.

### **AUTOMATIC RELIEF**

The AICPA also urges the IRS to identify specific circumstances for which providing automatic relief of underpayment and late payment penalties for the 2018 taxable year is appropriate. By providing automatic underpayment and late payment penalty relief, in specific circumstances identified by the IRS, taxpayers are relieved of the administrative burden of requesting waiver of penalties.

For example, instead of filing additional tax forms to qualify for this relief, taxpayers would only need to write "TCJA Relief" on the first page of their income tax return. In the past, taxpayers affected by declared disaster areas were granted an extension period to file their tax returns or make tax payments, including estimated tax payments. Affected taxpayers wrote the assigned Disaster Designation number in red ink at the top of the income tax return to receive automatic underpayment and late payment penalty relief.

### **BUSINESSES & OTHER ENTITIES**

The vast majority of tax returns are filed by individuals. However, all taxpayers – including businesses and exempt organizations – need appropriate penalty relief.

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Similar to individuals, businesses and tax-exempt organizations are subject to underpayment and late payment penalties.<sup>4</sup> The array of changes brought forth by TCJA and the lack of guidance also affected these entities resulting in many unable to accurately calculate their tax liability for the 2018 taxable year. It is important to maintain a fair and consistent treatment of all taxpayers particularly as they deal with the numerous changes that were part of tax reform.

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Given the tremendous amount of changes and uncertainty for the 2018 tax year, and challenges taxpayers and tax preparers continue to face during the filing season, it is both necessary and appropriate to provide additional penalty relief.

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 members in 137 countries and territories, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA welcomes an opportunity to provide Treasury and the IRS input in their further consideration of penalty relief. If you have any questions, please contact me at (408) 924-3508 or [Annette.Nellen@sjsu.edu](mailto:Annette.Nellen@sjsu.edu); Melissa Labant, AICPA Director – Tax Policy & Advocacy, at (202) 434-9234 or [Melissa.Labant@aicpa-cima.com](mailto:Melissa.Labant@aicpa-cima.com); or Lakecia Foster, AICPA Director of Congressional & Political Affairs, at (202) 434-9208, or [Lakecia.Foster@aicpa-cima.com](mailto:Lakecia.Foster@aicpa-cima.com).

Sincerely,



Annette Nellen, CPA, CGMA, Esq.  
Chair, AICPA Tax Executive Committee

cc: Members of the House Committee on Ways and Means  
Members of the Senate Committee on Finance  
The Honorable David J. Kautter, Assistant Secretary for Tax Policy, Department of the Treasury

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<sup>4</sup> Section 6655 and section 6621.