

August 14, 2023

Mr. Andy Keyso Ms. Lia Colbert

Chief of Appeals Commissioner, SB/SE

IRS Independent Office of Appeals Internal Revenue Service

Internal Revenue Service 1111 Constitution Ave, NW

1111 Constitution Ave, NW Washington, DC 20224

Washington, DC 20224

RE: Sharing Appeals Form 3520 and Form 3520-A Reasonable Cause Determinations with the Campus

Dear Mr. Keyso and Ms. Colbert:

The American Institute of CPAs (AICPA) is writing about the Internal Revenue Service (IRS) systemic assessment of penalties for late filed Forms 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner. Specifically, we suggest that the Independent Office of Appeals (Appeals) provide Appeals Case Memoranda (ACMs) where Appeals fully abates penalties relating to Form 3520 and Form 3520-A based on reasonable cause to Campus personnel handling initial reasonable cause requests. If Appeals decides that sharing ACMs is not possible or feasible, we recommend that Appeals coordinate with Office of Servicewide Penalties to provide Campus personnel with a summary of Form 3520 and Form 3520-A cases where Appeals fully conceded the penalty based on reasonable cause, including the factors that Appeals relied upon in each case to make these concessions.

**Background/Overview**

We understand that the IRS has a policy of systemically assessing maximum penalties when it receives a late filed Form 3520 or Form 3520-A at the IRS Service Center Campus in Ogden, UT and not considering attached reasonable cause statements. The penalty notice, typically a CP15, informs the taxpayer at the bottom of page two that they can submit a request for penalty relief based on reasonable cause within 30 days, regardless of whether a reasonable cause statement was attached to the late-filed Form 3520 or Form 3520-A.

In practically every case where reasonable cause statements are provided in response to Form 3520 and Form 3520-A penalty notices, the practitioner community has observed that Campus personnel routinely deny penalty abatement and then issue a Letter 854C. The only recourse for taxpayers after Campus personnel deny their penalty abatement request is to take their case to Appeals.

Based on anecdotal information from Appeals Officers, the IRS’s systemic assessment of maximum Form 3520 and Form 3520-A penalties results in a substantial number of cases going to Appeals. AICPA is appreciative of the role of Appeals to act as a safety valve to prevent unwarranted denial of penalty abatement. In many cases, Appeals fully concedes these cases based on reasonable cause. We understand that the grounds for resolving these cases are documented in ACMs.

We understand that Appeals has shared feedback with the Office of Servicewide Penalties on issues where Appeals has seen a pattern in cases being sent to Appeals where the cases should have been resolved by Campus personnel. For example, it is our understanding that in the past, Appeals has brought issues to the attention of the Office of Servicewide Penalties regarding the application of first-time abatement, the rules for managerial approval under section 6751(b), and compliance with Internal Revenue Manual provisions, and after the Office of Servicewide Penalties took action, Appeals received fewer cases. We suggest that Appeals do something similar with providing input to Campus for training of Campus employees regarding reasonable cause. Resolving cases at the lowest possible level will save taxpayers Appeals, and the Campus time and cost.

**Recommendation**

We recommend that Appeals provide ACMs reflecting a 100 percent abatement (or refund) of Form 3520 or Form 3520-A penalties for reasonable cause to the Campus personnel handling the initial consideration of reasonable cause. This idea is similar to what is done in certain types of cases that Appeals receives from LB&I. See generally [I.R.M. 8.6.2.3.4](https://www.irs.gov/irm/part8/irm_08-006-002#idm140541426207616). If Appeals decides that sharing ACMs is not possible or feasible, Appeals should coordinate with the Office of Servicewide Penalties to provide Campus personnel with a summary of Form 3520 and Form 3520-A cases where Appeals fully conceded and abated the penalty based on reasonable cause, including the factors that Appeals relied upon in each case to make these concessions.

**Analysis**

Providing real-world feedback to Campus personnel will assist them in developing more experience in properly evaluating reasonable cause abatement requests. Examples where Appeals found reasonable cause and conceded the penalty for the failure to timely file Form 3520 and Form 3520-A will help train Campus personnel. In turn, that training will result in more accurate application of the reasonable cause standard, which should (i) reduce the workload for Appeals and (ii) reduce the costs for taxpayers contesting systemic penalty assessments.

The costs to taxpayers in contesting these penalties can be significant. The law in this area is particularly complex and impacts many otherwise compliant taxpayers. It is particularly discouraging for taxpayers who are voluntarily coming into compliance to face systemic penalty assessments and denial of reasonable cause. This is especially true for middle income taxpayers who are being conservative and reporting foreign pension-type plans as foreign trusts. Many times, these taxpayers are unable to pay or are caught up in the cycle of correspondence and face collection activity, which increases the number of collection due process cases.

This proposal will not address all the challenges relating to Campus based systemic assessments of Form 3520 and Form 3520-A penalties, but it should lead to quicker resolution of cases with the IRS and reduce Appeals inventory of these penalty cases.

We thank you for your thoughtful consideration and look forward to your reply or further discussion on our suggestion.

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The AICPA is the world’s largest member association representing the accounting profession, with more than 421,000 members in the United States and worldwide, 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.

If you have any questions or would like to discuss it further, please contact Henry P. Alden II, Chair, AICPA Form 3520 Penalties Task Force, at (410) 571-0388, or [Halden@eigtax.com](mailto:Halden@eigtax.com); Eileen Sherr, Director — AICPA Tax Policy & Advocacy, at (202) 434-9256, or [Eileen.Sherr@aicpa-cima.com](mailto:Eileen.Sherr@aicpa-cima.com); or me at (830) 372-9692 or [bvickers@alamo-group.com](mailto:bvickers@alamo-group.com).

Sincerely,

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Description automatically generated

Blake Vickers, CPA, CGMA

Chair, AICPA Tax Executive Committee

cc: Ms. Elizabeth (Liz) Askey, Deputy Chief of Appeals, IRS Independent Office of Appeals, Internal Revenue Service

Mr. Darren Guillot, Deputy Commissioner, Collection and Operations Support, SB/SE, Internal Revenue Service

Mr. Victor Onorato, Director, SB/SE Operations Support, Internal Revenue Service

Mr. Kyle P. Oliver, Program Manager, [Office of Servicewide Penalties](https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsecure-web.cisco.com%2F1Z93-YnqZ1ehSou8BuVX9dE6fqw2rbFUHYx0eT_UlBHjzd69vYqKy7AyLPQMwePU2P6i514H6SVfeasuQRfFxIGMUyFgpWNWoE-7rJlxQLmfWF7w9NDnr6-iJFl0nr7Fv-r_axZpxAOYtJo3cLiGX8e2bWf5l2YYNbhkU3OS-kREBjSVRXfYzeujeoTnlpnPSU-XRmcNHfanJn3bE7NpjRRBkEbrRnDxzx6xCc5RS7Fj8nKSAdwHomsfG_QCnXc_20qF9cvpak8rl28WH6jvtqNiG_T1ap8okAGLYjfkm539DJmpFogO1qHtRkMX30nPt9xXzHDoV1kGjpBU0GWLlHejogG2GI4_NJXUz-Ivk9iTR20zDdr0N31lJX0sObYve6kz9VjwOvokdOpK-eb1cYx-w80EO0J-eXY7oQHXDylsKXNAZuJ8bKhbiEqHokyW7eYySVtuaqqQqCAr3E9QzYwYGQSfb2m1K-u8_eb2OflTOhr_HjwCnwM5F59GyQ_sBhbNDjEbpj7wolxl1h5xHXw%2Fhttps%253A%252F%252Fportal.ds.irsnet.gov%252Fsites%252FVL015%252FPages%252Fdefault.aspx&data=05%7C01%7CEileen.Sherr%40aicpa-cima.com%7Cb6a59e1e98f547d916f508da5935f07b%7Cab44e261e3294327bbdd17a5478226a1%7C1%7C0%7C637920385447149098%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=bqaX%2FRtzn5SNWl8b32ifgbAweFRvqxrFHxBYHp6zeeY%3D&re), Internal Revenue Service

Mr. Ryan K. Bessey, Senior Program Analyst, [Office of Servicewide Penalties](https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsecure-web.cisco.com%2F1Z93-YnqZ1ehSou8BuVX9dE6fqw2rbFUHYx0eT_UlBHjzd69vYqKy7AyLPQMwePU2P6i514H6SVfeasuQRfFxIGMUyFgpWNWoE-7rJlxQLmfWF7w9NDnr6-iJFl0nr7Fv-r_axZpxAOYtJo3cLiGX8e2bWf5l2YYNbhkU3OS-kREBjSVRXfYzeujeoTnlpnPSU-XRmcNHfanJn3bE7NpjRRBkEbrRnDxzx6xCc5RS7Fj8nKSAdwHomsfG_QCnXc_20qF9cvpak8rl28WH6jvtqNiG_T1ap8okAGLYjfkm539DJmpFogO1qHtRkMX30nPt9xXzHDoV1kGjpBU0GWLlHejogG2GI4_NJXUz-Ivk9iTR20zDdr0N31lJX0sObYve6kz9VjwOvokdOpK-eb1cYx-w80EO0J-eXY7oQHXDylsKXNAZuJ8bKhbiEqHokyW7eYySVtuaqqQqCAr3E9QzYwYGQSfb2m1K-u8_eb2OflTOhr_HjwCnwM5F59GyQ_sBhbNDjEbpj7wolxl1h5xHXw%2Fhttps%253A%252F%252Fportal.ds.irsnet.gov%252Fsites%252FVL015%252FPages%252Fdefault.aspx&data=05%7C01%7CEileen.Sherr%40aicpa-cima.com%7Cb6a59e1e98f547d916f508da5935f07b%7Cab44e261e3294327bbdd17a5478226a1%7C1%7C0%7C637920385447149098%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=bqaX%2FRtzn5SNWl8b32ifgbAweFRvqxrFHxBYHp6zeeY%3D&re), International Subject Matter Expert (SME), Internal Revenue Service

Ms. Erin Collins, National Taxpayer Advocate, Internal Revenue Service