



February 12, 2024

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. William Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Peter H. Blessing
Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Request to Allow Foreign-Owned U.S. Disregarded Entities to Electronically File their Form 5472 with Their U.S. Federal Income Tax Returns

Dear Ms. Batchelder, Mr. Paul and Mr. Blessing:

The American Institute of CPAs (AICPA) is submitting a request to allow foreign-owned U.S. disregarded entities (“DREs”) to electronically file their [Form 5472](#), *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, with their U.S. federal income tax returns.

Background

A foreign-owned U.S. DRE had no U.S. federal income tax filing obligation through the 2016 tax reporting year. Starting with the 2017 tax reporting year, foreign-owned U.S. DREs have been required to annually file Form 5472 in order to comply with final regulations under section¹ 6038A. Form 5472 is required to be filed when a foreign-owned U.S. DRE has a reportable transaction during the year. A penalty of \$25,000 is assessed on any reporting entity that fails to timely and completely and accurately file Form 5472.

The [instructions to Form 5472](#) stipulate that Form 5472 must be filed by foreign-owned U.S. DREs along with a pro forma page one of [Form 1120](#), *U.S. Corporation Income Tax Return*. In addition, the Form 5472 instructions only allow for Form 5472 to be filed by foreign-owned U.S. DREs via fax or mail. There is no provision for electronic filing.

¹ All references to “section” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §”, “Prop. Reg. §”, and “regulations” are to U.S. Treasury regulations promulgated thereunder, unless otherwise specified.

Recommendation

AICPA recommends that IRS allow foreign-owned U.S. DREs to electronically file their Form 5472 with their U.S. federal income tax return through the IRS Modernized e-File system ([MeF](#)).

Analysis

The U.S. DREs who are required to file Form 5472 are foreign-owned. In general, most foreign-owned U.S. DREs do not have employees in the U.S. Accordingly, most Forms 5472 filed by foreign-owned U.S. DREs are from outside of the U.S. Sending U.S. tax filings via the mail from overseas to the IRS can be a complex procedure, particularly if the sender wishes to get a proof of mailing. Many such proof of mailing documents are not even written in English. In addition, fax machines are rarely used by businesses in the twenty-first century.

Making Form 5472 filings by foreign-owned U.S. DREs able to electronically-file would place them on par with corporate income tax returns, partnership income tax returns, trust returns and individual income tax returns, all of which can be electronically filed via the IRS MeF.

Form 5472 filings by all filers other than foreign-owned U.S. DREs can be electronically filed as they are attached to and included with the underlying income tax return for the U.S. related party, such as with Form 1120.

Given the fact that most Form 5472 filings by foreign-owned U.S. DREs are made from outside of the U.S., and the fact that the penalty is \$25,000 for a late filing, we believe that the Form 5472 filings should be able to efiled through the MeF system.

The AICPA is the world's largest member association representing the accounting profession, with more than 415,000 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.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Chaya Siegfried, Chair, AICPA International Tax Technical Resource Panel, at (732) 759-6835, or csiegfried@withum.com, Reema Patel, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9217, or Reema.Patel@aicpa-cima.com; or me at (830) 372-9692, or bvickkers@alamo-group.com.

The Honorable Lily Batchelder, Mr. William M. Paul, and Mr. Peter H. Blessing

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Sincerely,

A handwritten signature in black ink, appearing to read "Blake Vickers".

Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: The Honorable Daniel I. Werfel, Commissioner, Internal Revenue Service
Ms. Lindsay M. Kitzinger, Office of the International Tax Counsel, Department of the Treasury
Ms. Brenda Zent, Special Adviser, Office of the International Tax Counsel, Department of the Treasury
Mr. Jim Wang, Deputy International Tax Counsel (Acting), Office of the International Tax Counsel, Department of the Treasury