



May 17, 2021

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

Mr. Mark J. Mazur
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Additional Penalty Relief Measures

Dear Commissioner Rettig and Acting Assistant Secretary Mazur:

The American Institute of CPAs (AICPA) recognizes and appreciates the efforts the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) have made to provide various forms of relief to taxpayers affected by the Coronavirus Disease 2019 pandemic (commonly known as “Coronavirus”). However, many taxpayers and their tax advisors continue to face pandemic-related challenges and are unable to voluntarily comply with their tax obligations, despite making good faith efforts to do so. Furthermore, the IRS continues to be stretched thin by the Coronavirus pandemic and has a staggering 29 million returns on hold that need manual processing on top of their ability to only answer 2% of all phone calls.¹

All taxpayers, regardless of their economic standing, deserve a tax administration system that provides support to help them meet their tax obligations. With this in mind, penalty relief measures that are fair, reasonable and practical, would not only mitigate the negative effect of the Coronavirus on taxpayers but also require fewer contacts with the IRS, thereby alleviating the current struggles that taxpayers, their advisors and the IRS face on a daily basis. Specifically, we urge Treasury and the IRS to:

- Provide taxpayers with targeted relief from both the underpayment of estimated tax penalty and the late payment penalty for the 2020 tax year.
- Offer a reasonable cause penalty waiver, *similar to* the procedures of first time abate (FTA) administrative waiver, without affecting the taxpayer’s eligibility for FTA in future tax years. Furthermore, the IRS should honor reasonable cause penalty waiver requests when a taxpayer qualifies for reasonable cause relief. Additionally, the IRS should publicly make it well known that an e-fax alternative to written reasonable cause requests over a certain threshold is available.
- Discontinue compliance actions until the IRS is prepared to devote the necessary resources for a proper and timely resolution of the matter. At a minimum, halt automatic collections activities of liens and levies for at least 90 days after the May 17 filing deadline.
- Align requests for account holds with the time it takes the IRS to process any penalty abatement requests.

¹ National Taxpayer Advocate Blog, “[2021 Filing Season Bumps in the Road: Part I](#),” April 22, 2021.

BACKGROUND

Penalties

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 tax due of less than \$1,000 receive an exception to the underpayment penalties.²

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. Taxpayers who can show reasonable cause for not paying on time may not have to pay the late payment penalty.³ 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.⁴

Reasonable Cause Relief

A taxpayer can request reasonable cause penalty relief for “[a]ny reason that establishes a taxpayer exercised ordinary business care and prudence but nevertheless failed to comply with the tax law”⁵ However, taxpayers must provide documentation to support their claim, such as hospital records, and must submit a written request.

At the end of last year, to help alleviate the burdensome written requirement, the IRS stated that taxpayers could request penalty relief due to reasonable cause over the phone up to a certain threshold.⁶ Additionally, if the request is for an amount above the threshold, the IRS should offer an e-fax alternative.

Collections

If taxpayers do not timely pay their tax obligations, they generally will receive a series of escalating automated notices reminding them of the amount owed, including any penalties and interest accrued, and demanding payment. These notices precede the automated collection process, which continues until the account is satisfied, the case is transferred to a revenue officer, or until the IRS is no longer able to legally collect the tax.

² 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.

³ Section 6651.

⁴ IRS, IRS Tax Tip 2013-58, “[Eight Facts on Late Filing and Late Payment Penalties](#),” Tip #5, April 18, 2013.

⁵ Internal Revenue Manual §20.1.1.3.2.1.

⁶ IRS, “[IRS Operations During COVID-19: Mission-critical functions continue](#),” January 13, 2021.

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If taxpayers do not contact the IRS to pay their tax obligation in full or make payment arrangements, for example through an installment agreement or offer in compromise, the IRS may file a Federal tax lien against the taxpayer, serve a notice of levy to the taxpayer, or offset some other refund to which the taxpayer is entitled, to satisfy the liability. Last year, due to the Coronavirus pandemic, under its “[People First Initiative](#),” the IRS suspended required payments on installment agreements and halted certain collection activities, including new automatic liens, systemic liens and systemic levies through July 15, 2020.

Account Holds

Taxpayers and their advisors can request a temporary delay, typically 8 or 9 weeks, of the collection process for various reasons (e.g., disputing a notice, penalty abatement requests or to discuss other payment options).

UNDERPAYMENT & LATE PAYMENT PENALTY RELIEF

The AICPA recommends providing taxpayers relief from underpayment and late payment penalties for the 2020 tax year. Specifically, we recommend taxpayers receive relief from the underpayment penalty if:

- Taxpayers paid at least 70% of the tax due for the current year, or
- Taxpayers paid 70% (90% 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 70% of the taxes owed with the request.⁷

Some taxpayers, such as the elderly or those with pre-existing health conditions, have been hesitant to meet with their tax advisors to provide all their tax data. Also, social distancing requirements for others continue to create difficulties in providing all tax data to preparers to accurately calculate necessary payments required for extensions.

Though we realize that the majority of Americans receive refunds and do not make quarterly estimated payments, hardworking Americans that pay estimated taxes, such as business owners or gig economy workers, should not be penalized by the difficulties created by the Coronavirus pandemic. Nor should taxpayers be penalized for the ongoing effects on the IRS, such as delayed or continuing lack of important guidance.

Income status should not be used as a shield against reasonable tax administration relief. Approximately 76% of Schedule C, *Profit or Loss From Business*, filers have relatively modest

⁷ AICPA letter, “[Underpayment and Late Payment Penalty Relief for 2020 Tax Year](#),” February 16, 2021.

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incomes below \$100,000 of AGI.⁸ Similarly, 68%⁹ of Schedule F, *Profit or Loss From Farming*, filers have AGIs below \$100,000. Indeed, IRS’s own “Taxpayer Bill of Rights” indicates that “each and every taxpayer” has fundamental rights that include:

- The right to be Informed
- The Right to Quality Service
- The Right to Pay No More than the Correct Amount of Tax
- The Right to Challenge the IRS’s position and be Heard

Along the lines of fundamental rights, an important purpose of offering underpayment and late payment penalty relief is to reduce the administrative burden on the IRS to issue these notices and to reduce the number of touch points taxpayers have with the IRS (i.e., the number of phone calls and written responses necessary for a taxpayer to resolve the notice).

Furthermore, by extending underpayment and late payment penalty relief retroactively for the 2020 tax year, there is little room for abuse since the last estimated payments were due on January 15, 2021.

Given the hardship and challenges so many taxpayers and their advisors continued to face during the 2021 tax filing season, it is both necessary and appropriate to provide penalty relief to all taxpayers.

REASONABLE CAUSE REQUESTS

For taxpayers that have received failure to file or late payment penalty notices due to the monumental difficulties of the Coronavirus, the AICPA recommends the IRS offer a reasonable cause penalty waiver, *similar to* the procedures of FTA administrative waiver, based on the Coronavirus effects on both the taxpayer and the practitioner.¹⁰ As the Coronavirus is an extraordinary event unlike anything faced in recent history, penalty relief based on a Coronavirus effect should not be considered first time abate. A taxpayer’s eligibility for first time abate should not be affected in future tax years even if the taxpayer was granted penalty relief due to Coronavirus effects.

Furthermore, the IRS should honor reasonable cause penalty abatement requests when a taxpayer qualifies for reasonable cause relief. Though the IRS has stated that penalty relief requests due to reasonable cause can be requested through the phone, only a very small number of taxpayers are granted reasonable cause penalty abatement. Instead, as IRS policy dictates, taxpayers are offered

⁸ IRS [SOI Tax Stats](#) - Individual Income Tax Returns with Small Business Income and Losses (2018).

⁹ *Id.*

¹⁰ We indicate “similar to” so that taxpayers who don’t qualify for FTA will qualify for relief, and those who would otherwise qualify for FTA can reserve it.

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FTA regardless if the taxpayer qualifies for reasonable cause penalty relief.¹¹ Certainly, there are taxpayers who qualified for and requested reasonable cause relief in 2020 but were provided with a FTA waiver. The leniency was appropriate and appreciated but those taxpayers, however deserving, will not qualify for FTA for problems experienced in 2021.

Finally, the IRS should make it well known that an e-fax alternative to *written* reasonable cause requests over a certain threshold (determined by the IRS) is available. Instead, the IRS telephone assistants are instructing taxpayers and their advisors to submit a written request and must wait months for a resolution.

DELAY IRS COLLECTIONS

The AICPA recommends that the IRS discontinue compliance actions until it is prepared to devote the necessary resources for a proper and timely resolution of the matter. At a minimum, the IRS should halt its automatic collections activities of liens and levies for at least 90 days after the May 17 filing deadline. At that time, the IRS should reassess further extending the halt of the automatic collection activities based on its capacity and capability.

After July 15, 2020, once the People First Initiative expired, taxpayers started to receive numerous automatic collection notices for amounts owed, new automatic liens, systemic liens and systemic levies. The IRS's compliance cycle was not realigned to the postponed due date, mail and processing backlogs, and resources limitations which resulted in millions of incorrect notices and actions. Almost a year later, taxpayers are still inappropriately receiving collection notices or threatening liens or levies, often with severe penalties.

Furthermore, many taxpayers must respond to notices through paper correspondence and must wait months for a resolution. Even though the IRS, in some instances, has indicated that taxpayers need not respond to these erroneous notices as IRS will systemically abate them, taxpayers are understandably concerned about the escalation of inappropriate IRS compliance activities before the penalty abatement.

The IRS must provide taxpayers relief from the endless cycle of unnecessary and inappropriate notice and collection activities.

ACCOUNT HOLDS

The AICPA recommends that the IRS align the length of a requested account hold with the amount of time it takes to process and resolve any notice disputes, penalty abatement requests or coordination of alternative payment arrangements.

¹¹ The FTA is an administrative waiver which is considered and applied prior to reasonable cause analysis as policy of the IRS. Information on the waiver and the policy to apply it prior to reasonable cause analysis can be found in the [Internal Revenue Manual 20.1.1](#).

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It is our understanding that the current account holds are for 9 weeks. However, the current time for the IRS to process the mail is about 16 weeks. This time discrepancy forces taxpayers and their advisors to unnecessarily call the IRS and request additional account holds to prevent further collections activities.

Given the fact that only 2% of taxpayers are able to speak with the IRS, this creates an undue burden on taxpayers and further contributes to the number of phone calls the IRS receives.

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The AICPA has heard from practitioners expressing concerns about completing returns by the May 17 postponed due date because of the significant effect the Coronavirus has had on their clients and on their practices. Moreover, taxpayers and their advisors often have difficulty communicating with the IRS, creating anxiety for taxpayers and needless multiple touch points for the IRS. A fair and equitable tax administration system should help all taxpayers meet their tax obligations, regardless of the simplicity or complexity needed to meet their tax obligations. To lessen the burdens of the unprecedented challenges created by the Coronavirus for everyone in the tax system, including the IRS, further penalty relief measures are needed.

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 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 feel free to contact Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9235 or Melanie.Lauridsen@aicpa-cima.com; or me at (612) 397-3071 or Chris.Hesse@CLAconnect.com.

Sincerely,



Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

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cc: The Honorable Ron Wyden, Chairman, U.S. Senate Committee on Finance
The Honorable Richard Neal, Chairman, U.S. House Committee on Ways and Means
The Honorable Mike Crapo, Ranking Member, U.S. Senate Committee on Finance
The Honorable Kevin Brady, Ranking Member, U.S. House Committee on Ways and Means