



December 14, 2021

The Honorable Ron Wyden  
Chairman  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Chairman  
U.S. House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Kevin Brady  
Ranking Member  
U.S. House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

Re: Tax Provisions in Senate Finance Committee Reconciliation Legislation Released on December 11, 2021

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) provides comments on various tax issues important to the accounting profession that are in the [Senate Finance Committee reconciliation legislation released on December 11, 2021](#). These comments are in addition to our letters previously submitted to Congress on October 1, 2021<sup>1</sup> and November 10, 2021,<sup>2</sup> regarding important profession and tax policy issues in the House Ways and Means Committee passed version and the House Manager's Amendment to the Rules Committee version of the reconciliation legislation, respectively.

The AICPA is a long-time advocate for a tax system based on principles of good tax policy.<sup>3</sup> We look forward to working with Congress as the reconciliation package moves forward to ensure that the proposed changes are administrable, equitable, and meet the needs of both taxpayers and tax practitioners. In this regard, we highlight some of the key issues we have identified for your consideration. We note that the items listed are not in any priority order, and we may have additional comments and insights as we further analyze the reconciliation legislation. In addition, as Congress moves forward with reconciliation legislation, it is important that special care is given to transition rules and to provide sufficient time and flexibility to implement the transition rules and offer penalty relief as needed.

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<sup>1</sup> See AICPA letter, "[Tax Provisions in House Reconciliation Legislation or Being Considered](#)," October 1, 2021.

<sup>2</sup> See AICPA letter, "[Tax Provisions in House Manager's Amendment to Rules Committee Reconciliation Legislation or Being Considered](#)," November 10, 2021.

<sup>3</sup> See [AICPA Principles of Good Tax Policy \(12 principles providing objective framework to evaluate policy proposals\)](#).

The Honorable Ron Wyden  
The Honorable Richard Neal  
The Honorable Mike Crapo  
The Honorable Kevin Brady  
December 14, 2021  
Page 2 of 5

Specifically, the AICPA provides comments on the following tax issues:

1. Corporate Alternative Minimum Tax
2. Funding of the Internal Revenue Service Enhancement of the Internal Revenue Service Resources
3. Modification of Procedural Requirements Relating to Assessment of Penalties
4. Limitation on Certain Special Rules for Section 1202 Gain

## 1. Corporate Alternative Minimum Tax

The AICPA has concerns with the *Corporate Alternative Minimum Tax* proposal contained in Section 128101.<sup>4</sup> In particular, the minimum tax violates numerous elements of good tax policy and there may be unintended negative consequences that should be carefully considered. For example, imposing tax according to financial statement income takes the definition of taxable income out of Congress's hands and puts it into the hands of industry regulators and others.<sup>5</sup> There are many key conceptual differences between financial income and taxable income, including the concept of materiality. Public policy taxation goals should not have a role in influencing accounting standards or the resulting financial reporting. Independence and objectivity of accounting standards are the backbone of our capital markets system.

There are other considerations as well.<sup>6</sup> For example, section<sup>7</sup> 56A(c) introduces "General Adjustments" to "applicable financial statements," which adds a level of complexity and requires clarification. In addition, the proposed *Corporate Alternative Minimum Tax* appears to fundamentally alter the foreign tax credit system that has been in place since 1962.

The proposed *Corporate Alternative Minimum Tax* will substantially increase the complexity of the Internal Revenue Code (IRC) and presents a fundamental shift in taxation of United States (U.S.) entities and could result in uncertain results to taxpayers and a costly compliance requirement.

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<sup>4</sup> See AICPA letter, "[Corporate Profits Minimum Tax in Reconciliation Language being Considered](#)," October 28, 2021.

<sup>5</sup> The *Corporate Alternative Minimum Tax* is a minimum tax based on 15% of adjusted financial statement (book) income rather than recognized income. The proposed corporate minimum tax would operate much like the corporate alternative minimum tax (AMT), requiring corporations to calculate taxes, first on taxable income and then again on book income based on adjusted financial statements that include current value of assets, and pay the higher of the two.

<sup>6</sup> See AICPA letter, "[Corporate Profits Minimum Tax in Reconciliation Language being Considered](#)," October 28, 2021 and AICPA letter, "[Tax Provisions in House Manager's Amendment to Rules Committee Reconciliation Legislation or Being Considered](#)," November 10, 2021.

<sup>7</sup> All references to "section" (unless referencing the House reconciliation legislation) are to the Internal Revenue Code of 1986, as amended, unless otherwise specified.

The Honorable Ron Wyden  
The Honorable Richard Neal  
The Honorable Mike Crapo  
The Honorable Kevin Brady  
December 14, 2021  
Page 3 of 5

## 2. Enhancement of the Internal Revenue Service Resources

Section 128401 proposes providing the Internal Revenue Service (IRS) with the following funding through September 30, 2031:

- \$3,181,500,000 for taxpayer services,
- \$45,637,400,000 for enforcement,
- \$25,326,400,000 for operations support, and
- \$4,750,700,000 for business systems modernization.

We understand that enforcement is an important aspect of the responsibilities of the IRS, however, enforcement actions must be in balance with the services the IRS provides to taxpayers. In order to meet the needs of taxpayers, we encourage the IRS to strive to be a [Modern-Functioning IRS for the 21<sup>st</sup> Century](#). Aspects of a Modern-Functioning IRS prioritizes customer satisfaction, including from enforcement actions, a modernized technological infrastructure, and provides IRS employees with the experience and training to understand and address taxpayer needs.

The legislative and executive branches should determine the appropriate level of service and compliance necessary for the IRS to provide and dedicate adequate resources for the agency to meet those goals. Given the historic low levels of IRS taxpayer services,<sup>8</sup> we are concerned about a possible imbalance between the funding for taxpayer services and enforcement.

## 3. Modification of Procedural Requirements Relating to Assessment of Penalties

The AICPA opposes Section 128403 relating to the modification of procedural requirements for the assessment of penalties. The check and balance of current IRC section 6751(b)<sup>9</sup> is necessary to protect taxpayers and provide a fair and just tax system. IRC section 6751(b) also requires at least one level of review of the IRS's most punitive tool. The procedural protection in the current law also ensures that penalties are never used as bargaining chips or to induce a taxpayer into settling a case. Section 138403 would repeal the requirement of prior supervisory approval of assertion of penalties, effective retroactively to 1998. IRS supervisors would, instead, only be required to certify on a quarterly basis that they are in compliance with the requirements of IRC section 671(a) and related IRS policies.

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<sup>8</sup> Michelle Singletary, The Washington Post, "[The IRS is a hot mess: Millions of tax returns haven't been processed, and calls are going unanswered, including mine](#)," July 2, 2021.

<sup>9</sup> Under IRC section 6751(b), "No penalty... shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary may designate." One exception includes penalties "automatically calculated through electronic means." This provision requires, for example, first-level managerial approval before a revenue agent may determine or propose a penalty against a taxpayer during an exam.

The Honorable Ron Wyden  
The Honorable Richard Neal  
The Honorable Mike Crapo  
The Honorable Kevin Brady  
December 14, 2021  
Page 4 of 5

Efforts should be focused not in reducing taxpayer protections when it comes to penalty assertion, but in preserving and expanding taxpayer protections. The IRS should focus efforts on ensuring consistency in determining whether the penalties should be imposed (abated) for similarly situated taxpayers. Consistency in assessing penalties would mitigate, for example, perceived disparate treatment in the abatement consideration of international penalties, such as for Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, or Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*. Moreover, penalty abatement determinations will be more efficient if the IRS expands abatement authority to telephone customer service personnel, which would eliminate the need for many taxpayers to correspond with the IRS on a notice, thus bolstering taxpayer service and reducing the IRS paper workload.

#### **4. Limitation on Certain Special Rules for Section 1202 Gains**

The AICPA opposes Section 128148 related to the limitation on certain special rules for IRC section 1202 gains. The provision eliminates the 75% and 100% exclusion rates for gains realized from qualified IRC section 1202 stock for taxpayers with AGI equal or exceeding \$400,000 (determined without the IRC section 1202 exclusion) for gains recognized after September 13, 2021. This constitutes a retroactive tax increase. For years, these taxpayers have relied on the existing statute to make investment decisions. This proposal injects significant uncertainty as to future investment decisions with the threat of continual IRC changes. If such a limitation is imposed, it should apply to issuances, rather than sales, of stock after September 13, 2021.

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The AICPA is the world's largest member association representing the accounting profession, with more than 428,000 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 welcome the opportunity to discuss these comments on the reconciliation legislation or to answer any questions that you may have. If you have any questions, please contact; Edward Karl, AICPA VP Taxation, at (202) 355-4892, or [edward.karl@aicpa-cima.com](mailto:edward.karl@aicpa-cima.com); Lauren Pflugstag, Director – AICPA Congressional or Political Affairs, at (407) 257-0607, or [lauren.pflugstag@aicpa-cima.com](mailto:lauren.pflugstag@aicpa-cima.com); or me at (601) 326-7119 or [JanLewis@HaddoxReid.com](mailto:JanLewis@HaddoxReid.com).

The Honorable Ron Wyden  
The Honorable Richard Neal  
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The Honorable Kevin Brady  
December 14, 2021  
Page 5 of 5

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Lewis".

Jan Lewis, CPA  
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance  
Members of the House Committee on Ways and Means  
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation  
The Honorable Janet Yellen, Secretary of the Treasury  
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury  
Mr. Mark Mazur, Deputy Assistant Secretary for Tax Policy, Department of the Treasury  
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service  
The Honorable William M. Paul, Chief Counsel, Internal Revenue Service