



November 5, 2020

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
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 for 2019 Tax Year Filing Season

Dear Assistant Secretary Kautter and Commissioner Rettig:

The American Institute of CPAs (AICPA) appreciates the numerous changes the Internal Revenue Service (IRS) has made to provide payment relief to taxpayers affected by the Coronavirus Disease 2019 pandemic (commonly known as “Coronavirus”) through [IR-2020-248](#). However, many taxpayers and tax preparers faced insurmountable challenges as a result of the Coronavirus and were unable to pay taxes or timely file tax returns by the extended due date, despite making good faith efforts to do so. Penalty relief should be a priority as part of the IRS’s efforts to mitigate the negative impact of the Coronavirus.

Specifically, the IRS should offer an expedited and streamlined reasonable cause penalty abatement process to taxpayers affected by the Coronavirus. Additionally, the IRS should develop specific Coronavirus examples that qualify for reasonable cause abatement and share these examples with all telephone assistors through an Interim Guidance. Furthermore, the IRS should develop a dedicated telephone number, or a dedicated prompt, for taxpayers or their advisors to call to request Coronavirus-related penalty relief.

BACKGROUND

Taxpayers are required to file their federal income taxes by the return due date or the extended due date if an extension to file is requested and approved. In order to avoid failure to file penalties, the taxpayer must show such failure to file was due to reasonable cause and not due to willful neglect.¹

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.² Historically, the IRS has granted relief to taxpayers that request an extension

¹ Section 6651. 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.

² Section 6651.

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.³

Throughout the summer, the AICPA heard from practitioners expressing concerns about being able to complete returns by the September 15 and October 15 extended due dates because of the significant impact the Coronavirus has had on their clients and on their practices. Practitioners, and clients, are still managing remote work environments, often have had difficulty communicating with the IRS, and many are caring for sick family members or are sick themselves. Practitioners are helping small businesses with the Paycheck Protection Program applications and forgiveness, and otherwise advising small businesses on the brink of closure. Despite making every good faith effort to comply, these practitioners and taxpayers were fearful of missing the due dates. These concerns were relayed to the IRS.

Starting approximately a month after the September 15, 2020 filing deadline, many taxpayers that missed the filing and payment deadline, due to the Coronavirus, started to receive notices for failure to file penalties. We are fearful that a second wave of notices for failure to file and late payment penalties will soon be sent to taxpayers for returns that were due October 15 but were filed late as a result of the impact of the Coronavirus.

On November 2, 2020, the IRS released IR-2020-248, which made it easier for taxpayers to set up payment agreements. For example, the IRS has allowed short-term payment plan options to extend up to 180 days (instead of 120 days) and flexibility on payments for taxpayers unable to meet the payment terms of an accepted Offer in Compromise, among other payment accommodations.

RECOMMENDATIONS

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 create an expedited and streamlined reasonable cause penalty abatement process that eliminates the need for written requests. The IRS should offer a penalty waiver, *similar to* the procedures of first time abate (FTA) administrative waiver, based on the Coronavirus impacts on both the taxpayer or the practitioner.⁴ As the Coronavirus is an extraordinary event, unlike anything faced in recent history, penalty relief based on a Coronavirus impacts should not be considered first time abate. A taxpayer's eligibility for first time abate should not be impacted in future tax years even if the taxpayer was granted penalty relief due to Coronavirus impacts.

³ Section 6651(a)(2) and IRS, IRS Tax Tip 2013-58, "[Eight Facts on Late Filing and Late Payment Penalties](#)," Tip #5, April 18, 2013.

⁴ 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.

This expedited and streamlined relief should also be available through oral requests⁵ and by the practitioner, rather than requiring the request in writing.⁶

Furthermore, it is critical that immediate guidance, such as Interim Guidance, with specific Coronavirus examples that qualify for reasonable cause is developed and provided to all telephone assistors. The examples should illustrate situations where reasonable cause relief should be granted as a result of the effects of the Coronavirus on either the taxpayer or the practitioner.

Finally, a dedicated telephone number, or a dedicated prompt within the already existing taxpayer call lines and the Practitioner Priority Service line, should be established to call and request Coronavirus-related penalty relief. To ensure that assistors are familiar with the Interim Guidance and have authority to abate or waive penalties, training should be provided to the telephone assistors.

CONCLUSION

The circumstances associated with the late filed returns or late payment of taxes, due to the Coronavirus, should generally qualify for reasonable cause penalty waivers. From a broad policy perspective, this year, the IRS should liberally waive penalties for late filing returns or late payments that are delayed due to the effects of the Coronavirus on the taxpayers and their advisers. Furthermore, the procedures for granting penalty relief should be expedited and should not unnecessarily increase burden for the taxpayer, the practitioner, and the IRS. Indeed, the IRS has indicated that it still has a 5 million-piece mail backlog, questioning the efficacy of requiring abatement requests in writing.⁷ An expedited and streamlined reasonable cause penalty abatement process is both necessary and appropriate to provide the needed penalty relief during these extraordinary circumstances.

* * * * *

⁵ The request may be made orally. See IRM 20.1.1.3.1(2) which indicates: If the taxpayer does not meet FTA criteria, unsigned or oral requests for relief from the FTF, FTP and/or FTD penalties may be considered if the following are true: A. The request is received either orally or in writing, but is unsigned, AND B. The request is received from the taxpayer, the taxpayer's authorized representative or a third party, AND C. The penalties do not exceed ≡≡≡≡≡≡ (e.g., tax period), AND D. Reasonable cause criteria is met.

⁶ The request may be made by the practitioner without having first obtained a power of attorney ("third party"). See IRM 20.1.1.3(3): In the interest of fairness, the IRS will consider requests for penalty relief received from third parties, including requests from representatives without an authorized power of attorney. While information may be accepted, no taxpayer information may be discussed with a third party unless a valid power of attorney or other acceptable authorization is secured in writing from the taxpayer. See *IRM 20.1.1.3.1, Unsigned or Oral Requests for Penalty Relief*.

⁷ Sunita B. Lough, IRS deputy commissioner for services and enforcement, as told to a CCH Inc. virtual conference sponsored by Wolters Kluwer October 27, 2020.

The Honorable David J. Kautter
The Honorable Charles P. Rettig
November 5, 2020
Page 4 of 4

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,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a stylized flourish at the end.

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

cc: The Honorable Richard Neal, Chairman, House Committee on Ways and Means
The Honorable Chuck Grassley, Chairman, Senate Committee on Finance
The Honorable Kevin Brady, Ranking Member, House Committee on Ways and Means
The Honorable Ron Wyden, Ranking Member, Senate Committee on Finance
Mr. Eric Hylton, Commissioner, Small Business/Self-Employed Division, IRS
Mr. Darren Guillot, Deputy Commissioner, Collection and Operations, Small Business/Self-Employed Division, IRS
Mr. John McNelly, Program Manager, Office of Servicewide Penalties, Small Business/Self-Employed Division, IRS