



**WRITTEN STATEMENT OF JAN F. LEWIS  
ON BEHALF OF  
THE AMERICAN INSTITUTE OF CPAs**

**BEFORE  
THE UNITED STATES SENATE  
COMMITTEE ON FINANCE**

**HEARING ON  
SPOTLIGHTING IRS CUSTOMER SERVICE CHALLENGES**

**FEBRUARY 17, 2022**

## **INTRODUCTION**

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, as we enter a third filing season under the pandemic many taxpayers and their tax advisors continue to face challenges and are still 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 23<sup>1</sup> million returns, correspondence and adjustments needed manual processing on top of their ability to only answer 2% of all phone calls at certain points of the year.<sup>2</sup> For the entire FY 2021, IRS received 282 million calls of which only 32 million were answered or about 11%.<sup>3</sup>

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, the AICPA proposes both short-term recommendations to immediately mitigate IRS service deficiencies experienced by taxpayers, and long-term recommendations to help establish a modernized and respected federal agency. Additionally, we flag some potential areas of concern that could create further hardship to the already strained tax administration system, particularly during the current tax filing season.

We would like to acknowledge recent steps taken by IRS in reaction to the growing expression of concerns including (1) [suspension of the CP80 notice](#) on January 27, 2022; (2) the February 2, 2022 creation of a [Service-wide inventory surge team](#) to address inventory backlogs; and (3) the February 9, 2022 [suspension of additional letters](#) including certain automated collection notices.

The AICPA appreciates that the IRS seems to be listening and responding to the collective frustrations of all taxpayers. Taxpayers, practitioners and IRS will benefit from reducing unnecessary contact that will result from the notice suspensions. However, we must urge the Service to move as quickly as possible to offer all possible, reasonable measures of relief as we are already in the beginnings of tax busy season. All of the recommendations that follow are actions that the IRS can legally take right now to provide immediate relief to taxpayers. Time is of the essence.

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<sup>1</sup> Erin Collins, National Taxpayer Advocate, Testimony before House Ways and Means Oversight Subcommittee Hearing on “Challenges Facing Taxpayers,” February 8, 2022.

<sup>2</sup> National Taxpayer Advocate Blog, “[2021 Filing Season Bumps in the Road: Part I](#),” April 22, 2021.

<sup>3</sup> 2021 National Taxpayer Advocate Annual Report to Congress, Most Serious Problem #3, page 66.

## **SHORT-TERM RECOMMENDATIONS**

### 1. DELAY IRS COLLECTIONS

#### *Background*

If taxpayers do not timely pay their tax obligations, they generally will receive a series of automated notices reminding them of the amount owed, including escalating amounts of 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.

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 intent to levy to the taxpayer, or offset some other refund to which the taxpayer is entitled, to satisfy the liability. In 2020, 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.

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 resource limitations which resulted in millions of incorrect notices and actions. Over a year later, taxpayers are still inappropriately receiving collection notices or threatening liens or levies, often with severe penalties.

#### *Recommendation*

The AICPA recommends that the IRS temporarily discontinue automated 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 April 18, 2022 filing deadline. At that time, the IRS should reassess further extending the halt of the automatic collection activities based on its capacity and capability.

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.

## 2. ACCOUNT HOLDS

### *Background*

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).

### *Recommendation*

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.

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 an incredibly low percent of taxpayers are able to speak with the IRS, not automatically aligning account holds with their current processing times creates an undue burden on taxpayers and further contributes to the number of phone calls the IRS receives. In addition, anecdotally, CPAs tell us that when they are able to reach a call assistant, the hold is of limited duration, and they are told to call back if they need additional time.

## 3. REASONABLE CAUSE REQUESTS

### *Background*

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 ...”<sup>4</sup> However, taxpayers must provide documentation to support their claim, such as hospital records, and must submit a written request.

At the end of 2020, 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

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<sup>4</sup> Internal Revenue Manual §20.1.1.3.2.1.

threshold.<sup>5</sup> Additionally, if the request is for an amount above the phone threshold, the IRS should offer an e-fax alternative.

### *Recommendation*

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.<sup>6</sup> 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 FTA regardless if the taxpayer qualifies for reasonable cause penalty relief.<sup>7</sup> Certainly, there are taxpayers who qualified for and requested reasonable cause relief in 2020 but were provided with an 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.

## 4. UNDERPAYMENT & LATE PAYMENT PENALTY RELIEF

### *Background*

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

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<sup>5</sup> IRS, "[IRS Operations During COVID-19: Mission-critical functions continue](#)," January 13, 2021.

<sup>6</sup> 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.

<sup>7</sup> 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](#).

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

### *Recommendation*

The AICPA recommends providing taxpayers relief from underpayment and late payment penalties for the 2021 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.<sup>11</sup>

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

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<sup>8</sup> 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.

<sup>9</sup> Section 6651.

<sup>10</sup> IRS, IRS Tax Tip 2013-58, "[Eight Facts on Late Filing and Late Payment Penalties](#)," Tip #5, April 18, 2013.

<sup>11</sup> AICPA letter, "[Underpayment and Late Payment Penalty Relief for 2020 Tax Year](#)," February 16, 2021.

incomes below \$100,000 of AGI.<sup>12</sup> Similarly, 68%<sup>13</sup> 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 2021 tax year, there is little room for abuse since the last estimated payments were due on January 18, 2022.

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.

## **LONG-TERM RECOMMENDATIONS**

The AICPA is committed to supporting the IRS in achieving improved customer service and organizational modernization from a long-term, strategic perspective. Our suggestions are focused in two areas: (1) [Pub. L. No: 116-25](#) (referred to as the *Taxpayer First Act* (TFA)); and (2) resources for the Internal Revenue Service.

### **(1) The *Taxpayer First Act***

The IRS should adopt a visionary approach looking beyond immediate constraints to develop long term goals (which look towards a 10- or even 15-year horizon). In addition, the IRS should provide flexibility in its design to ensure the agency will continue to evolve. In January 2021, IRS sent its [Taxpayer First Act Report to Congress](#) as required by statute. We provided input as the IRS established a comprehensive customer service strategy, a comprehensive training strategy and a comprehensive written plan to redesign the organization of the IRS, as required by TFA and are pleased that IRS adopted several AICPA ideas into its report.

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<sup>12</sup> IRS [SOI Tax Stats](#) - Individual Income Tax Returns with Small Business Income and Losses (2018).

<sup>13</sup> *Id.*

Importantly, we appreciate that a new Third-Party Relationships Office<sup>14</sup> is being contemplated as an integral part of the organizational modernization. Leveraging the value that practitioners and other third-parties provide to taxpayers will ultimately serve to elevate the level of service IRS is able to provide to all taxpayers. AICPA's full recommendations follow:

### **Comprehensive Customer Service Strategy**

The IRS's comprehensive customer service strategy should provide its customers with access to empowered employees, timely information, and tailored resources.

- *Access to empowered employees* – In order to improve customer service, the IRS should: (1) grant authority to general assistors to resolve issues over the phone; (2) provide an opportunity for a discussion with a higher skilled/trained assistor (on the same call); and (3) expect a sense of ownership from a single team (or “pod”). Resolving issues on the “front-end” of the process (e.g., through the initial assistor) would free up resources on the back-end.
- *Access to timely information* – To streamline interactions, the IRS should provide: (1) a secure communications platform (for two-way communication with tax professionals); (2) a robust tracking system (similar to “Where’s my Refund”) for notices, ITIN applications, time-stamped responses, confirmations of receipt, and other correspondence; (3) an efficient process for taxpayers to authorize third parties; and (4) an online professional account (with single sign-on for access to all of their clients’ information, not just one client.) Authentication for accessing information must be strict, but manageable.
- *Access to tailored resources* – The vast majority of resources have traditionally focused on taxpayers. Other customers, such as tax professionals and hard to serve taxpayers with differing needs, should not be forced to use platforms/resources designed for general taxpayers. The IRS would create efficiencies by developing resources to serve tax professionals (who represent the majority of taxpayers, including taxpayers served by low-income clinics). The IRS also should form focus groups to better understand how particular taxpayers (that are not currently served by traditional resources) best receive information.

### **Comprehensive Training Strategy**

The IRS's strategy on training should include customer-focused subject matters, a consistent and high-quality format, and the leveraging of trained employees.

- *Customer-focused subject matters* – In addition to substantially enhancing the way it teaches core and advanced tax law, the IRS should fundamentally prioritize the training it

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<sup>14</sup> [Taxpayer First Act Report to Congress, January 2021, page 107.](#)



provides employees on: (1) general customer service; (2) procedural issues; and (3) real-life business practices and taxpayer limitations.

- *Consistent and high-quality format* – To deliver training comparable to the private sector, the IRS should: (1) standardize its approach (perhaps through an IRS University); (2) modernize its approach to training, including implementing current training best practices and offering interactive options; (3) leverage the experience of tax professionals; and (4) use subject matter experts with strong instructional skills (internal and external) to train employees. If an internal “IRS University” is deemed unfeasible, we recommend a centralized and more coordinated oversight of cross-organization specialized training to ensure consistency and quality.
- *Leveraging of trained employees* – Given the limitations, we recognize it is not realistic to fully-train all the IRS employees on the large scope of the tax laws and procedures. Therefore, we recommend that IRS assistors operate in teams (or “pods”) that allow general assistors to immediately transfer more complex issues to higher skilled assistors with specialized training.

## **IRS Redesign Plan**

The IRS’s comprehensive plan to redesign the organization should incorporate a customer-focused culture, provide an integrated technological infrastructure, and create a dedicated Practitioner Services Division.<sup>15</sup>

- *Customer-focused culture* – To improve customer service, the IRS should (1) adopt a business-like approach to maximize its efficiencies; (2) embrace a mindset as if there were a competitive incentive to provide stellar service; (3) partner with external stakeholders to efficiently leverage private sector best practices; and (4) develop metrics based on quality of service instead of the number of touches with taxpayers and metrics that will help determine the success of implementing the TFA.
- *Integrated technological infrastructure* – The IRS currently has a significant number of legacy systems that prevents it from using current and evolving technology. Therefore, we recommend the IRS move to a platform company model in which the technological infrastructure allows for integration and coordination of information throughout the organization. An integrated infrastructure will ultimately allow the IRS to meet the needs of both the taxpayers and their representatives in an efficient and timely manner. Furthermore, the IRS should explore the efficiencies of cost and timeline of

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<sup>15</sup> This recommendation is consistent with previously submitted recommendations: Tax professionals’ coalition letter, “[Ensuring a Modern-Functioning IRS for the 21<sup>st</sup> Century](#),” April 3, 2017; AICPA comment letter, “[Taxpayer First Act Discussion Draft](#),” April 6, 2018; and NAEA white paper, “[Creating a Taxpayer-Focused Internal Revenue Service](#),” January 15, 2020.

implementation with in-house development as well as outsourcing. Many partner organizations, such as banks, software companies and municipalities, are currently utilizing the technological platforms and understand the benefits and challenges of implementing the platforms. Outsourcing could potentially allow the IRS to remain current from a technological perspective.

- *Dedicated Practitioner Services Division* – Practitioners play a vital role in tax administration. In order to enhance its relationship with the practitioner community, the IRS should commit to a Practitioner Services Division. Without a dedicated “executive-level” Practitioner Services Division that can participate in the design of key practitioner-impacting policies and programs, the IRS will not achieve the success it desires with the tax preparer community.<sup>16</sup> At a minimum, the Practitioner Services Division should: (1) engage with the tax professional community; (2) ensure practitioner feedback is acted upon through a liaison with all major operating divisions; (3) maintain robust practitioner hotlines; and (4) provide an online tax professional account.

## **(2) Resources for the Internal Revenue Service**

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, we are concerned about a possible imbalance between the funding for taxpayer services and enforcement.

## **OTHER AREAS OF CONCERN**

### **1. FILING DEADLINE**

Discussions regarding the viability of the April 18 tax return due date have been flourishing. AICPA members are split in opinion on the due date although a majority prefer that April 18 not be changed. And of those who prefer that the date change, there is no unanimity as to the month of postponement with their choices mainly split between May, June and July, with other months cited as well.

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<sup>16</sup> Tax professionals represent millions of taxpayers, including 58.34% of all e-filed returns in 2019, according to the [Filing Season Statistic for Week Ending Nov. 22, 2019](#).

AICPA is not currently advocating for a change but will closely monitor the situation as we move through tax filing season. However, practitioners are unified on at least one point: if the IRS does opt to extend the filing season, that decision should be made early, and the extension should apply to both return filing and tax payments including estimated tax due dates.

## 2. TELEPHONE CALL SERVICES

Because of the unprecedentedly low IRS telephone response rates,<sup>17</sup> practitioner use of commercial telephone call services, such as enQ, have prospered. At least one Congressional inquiry<sup>18</sup> has asked IRS Commissioner Rettig to evaluate whether these commercial services are impacting the capacity of IRS systems and that he consider “all potentially applicable remedies.” In addition, media reports<sup>19</sup> indicate that IRS is looking into the issue.

The AICPA has no position regarding the use of commercial telephone services; however, we note that their growing use is symptomatic of degraded IRS service levels.

## 3. TIMING OF THE USE OF THE NEW SCHEDULES K-2 AND K-3

The AICPA, the tax return preparer community, and taxpayers welcome any and all relief that the IRS can provide for the expanded international reporting on Schedules K-2 and K-3. A streamlined and expanded reporting tool of complex matters through fiscally transparent entities was undeniably necessary. However, with further clarification needed on the actual mechanics of filing, along with the late IRS announcement expanding expectations for reporting with regards to foreign tax credits, the tax system has been left confused and in disarray.

Given IRS's already unprecedented processing backlogs, the AICPA has deep concerns that implementing these new requirements will ultimately exacerbate the significant challenges everyone in the tax administration community currently faces. We therefore recommend that the IRS delay the implementation of the Schedules K-2 and K-3 to at least the 2023 tax filing season (the 2022 tax year). Delaying the filing of Schedules K-2 and K-3 will provide the IRS with additional time to properly complete the Modernized e-File (MeF) acceptance of these forms in electronic format and allow the tax professional community to appropriately apply the expanded guidance and scope only recently announced in updates to the final instructions.

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<sup>17</sup> See footnotes 2 and 3.

<sup>18</sup> Letter to IRS Commissioner Charles P. Rettig, November 18, 2021, from Senators Bill Cassidy, Robert Menendez, Todd Young, and Mark Warner.

<sup>19</sup> *IRS Looking Into Phone-Line-Jumping Service*, Tax Notes, November 8, 2021.

**CONCLUDING REMARKS**

From a broad policy perspective, this year, the IRS should liberally waive penalties for late filing returns or late payments that are delayed both due to the effects of the Coronavirus on taxpayers and their advisers as well as unprecedentedly low IRS service levels. Furthermore, the procedures for granting penalty relief should be expedited and adjusted so that the procedures reduce the burdens placed on the taxpayer, the practitioner, or the IRS. Indeed, the IRS has indicated that it still has a 23-million-piece return, adjustment and mail backlog, questioning the efficacy of requiring abatement requests in writing. An expedited and streamlined reasonable cause penalty abatement process is both necessary and appropriate to provide the needed penalty relief during these extraordinary circumstances.

The AICPA appreciates the opportunity to submit this written statement for the record in support of taxpayers and the tax system.