



July 11, 2022

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

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

Re: Additional Measures to Address Backlog

Dear Commissioner Rettig and Assistant Secretary Batchelder,

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 over the past three years to provide relief to taxpayers and practitioners affected by the extraordinary circumstances caused by the Coronavirus Disease 2019 pandemic (commonly known as “COVID-19”). We understand that the IRS has been called upon by Congress to administer significant economic benefits programs in the form of three rounds of economic impact payments, advanced child tax credit, the employee retention credit, and other provisions in addition to its regular duties.¹ Additionally, we appreciate the efforts made by the IRS to address taxpayer and practitioner concerns. In particular, the suspension of certain automated notices and the creation of surge teams to address the backlog have provided significant relief for taxpayers and practitioners, and we commend the IRS for implementing these solutions.

However, more needs to be done to ensure that taxpayers and practitioners are not faced in 2023 with yet another tax filing season with “unprecedented” levels of unprocessed returns, leading to delays in processing and incorrect notices and penalties. The recent revelation that the IRS destroyed over 30 million unprocessed paper returns has greatly eroded the trust taxpayers and practitioners have in the IRS.² To alleviate the ongoing issues with the backlog of returns, prevent the repetition of another frustrating tax season for taxpayers and practitioners, and rebuild trust with the American public, the AICPA recommends that the IRS:

- Clearly communicate to the public, in a timely manner, the status of all IRS operations. This includes current processing times for both paper and electronically filed returns, amount of unopened mail, number of unprocessed returns by return type, number of error resolution cases, dates through which mail, including original and amended returns, has been processed, and projected dates for a return to normal (i.e., pre-pandemic) inventory levels.

¹ 2021 National Taxpayer Advocate Annual Report to Congress, [Preface: Introductory Remarks by the National Taxpayer Advocate](#), page 1.

² [IRS Statement – Information Returns](#), May 13, 2022.

- Continue the use of surge teams to expedite the processing of returns and consider increasing the number of surge teams if the inventory backlog is not expected to reach healthy levels before the end of the year.
- Continue the suspension of automated compliance actions until the IRS is better prepared to devote the necessary resources for a proper and timely resolution of the matters.
- 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.³

By taking these proactive steps, the IRS can reduce the potential for another disruptive and chaotic filing season.

BACKGROUND

Automated Notices and Collections

If the IRS assesses tax and it is not paid within a certain period, the taxpayer generally will receive a series of escalating automated notices, reminding them of the amount owed, including any penalties and interest accrued, and demanding payment. Assessed tax can include assessable penalties, even if the taxpayer has written to the IRS to request reasonable cause or other penalty relief and is waiting for the IRS to act on this request. After these notices, the automated collection process begins and will generally continue until the tax is paid, an alternative payment method has been approved, the tax is determined not to be due (e.g., waiver of a penalty), the case is transferred to a revenue officer, or the IRS is no longer able to legally collect the tax.

If taxpayers do not pay the tax the IRS says is due in full or make payment arrangements (for example through an installment agreement or offer in compromise), the IRS may file a notice of Federal tax lien against the taxpayer, serve a notice of levy to the taxpayer, or offset tax refunds or amounts due to the taxpayer from other federal agencies to pay the tax. 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, in response to the COVID-19 pandemic. The IRS announced it would renew the suspension of limited types of automated notices on January 27, 2022, and expanded the types of notices that would be suspended on February 9, 2022.⁴

There are some instances where the IRS has a statutorily imposed deadline to issue certain notices in order to assess or collect tax. For instance, a statutory notice of deficiency must be sent to the taxpayer prior to the expiration of the statute of limitations on assessment or the IRS will be unable to assess tax in that case. In addition, the IRS must send certain notices before the statute of

³ The AICPA has requested this targeted relief for taxpayers on multiple occasions. See for instance Coalition letter, "[Relief for Taxpayers for the 2022 Filing Season](#)," January 14, 2022; and AICPA letter, "[Additional Penalty Relief Measures](#)," May 17, 2021.

⁴ A full list of suspended notices can be found at "IRS, "[IRS continues work to help taxpayers; suspends mailing of additional letters](#)," February 9, 2022.

limitations on collection expires or the IRS will not be able to collect the tax, even if it is owed and was timely assessed. This is not the same as saying that the IRS is statutorily required to send certain notices, which is what the IRS has been stating as justification for not stopping all notices while they work through the backlog. In fact, it is well-established that the Commissioner has discretion to exercise the IRS's enforcement resources as it deems appropriate as those resources are not unlimited. If that were not the case, every return would have to be audited every year. Accordingly, we believe that the IRS should exercise its authority in light of this unprecedented backlog, and cease issuing all compliance and collection notices until the backlog of correspondence has returned to pre-pandemic levels.

Reasonable Cause Relief

Generally, 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. Some of these taxpayers may be eligible for first time abatement (FTA) relief, which allows taxpayers who otherwise do not qualify for reasonable cause relief to have penalties waived if it is the first time they have not been in compliance for the past several years. However, FTA is available only if the penalty was not imposed on the taxpayer in the past three years. In addition, FTA is not available for taxpayers and filers of certain forms, including forms 1099 and form 990. These taxpayers can only obtain penalty relief by filing a written reasonable cause relief 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 threshold.⁶ However, taxpayers and practitioners should be informed that if the request is for an amount above the threshold, the IRS can offer an e-fax alternative to a mailed request.

COMMUNICATE STATUS OF IRS OPERATIONS CLEARLY

Much of the information provided to the public by the IRS regarding the progress on processing returns can be found at “IRS Operations During COVID-19: Mission-critical functions continue,” which provides some updates on a weekly basis. Other portions have not been updated in months, in some cases even years. The information provided is vague, particularly when describing the length of time taxpayers can expect for processing of returns and responses to taxpayers’ communications.

In addition to the webpage discussed above, the IRS currently also publishes a weekly news announcement with limited information about the progress being made on processing returns.⁷ This announcement is not heavily publicized or prominently displayed for easy access. The

⁵ Internal Revenue Manual §20.1.1.3.2.1.

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

⁷ IRS, “[Filing Statistics for Week Ending May 20, 2022](#),” May 27, 2022.

information it provides is surface level and does not give detailed information on the numbers of outstanding returns, and only includes information for individual returns.

Taxpayers deserve to have more certainty regarding when their returns and correspondence will be processed and acknowledged, and the progress being made in working through the backlog. Increasing the detail of information provided on a regular basis to include a breakdown by type of returns processed, dates through which mail has been opened and returns have been processed, the number of pieces of mail that remains unopened and returns that remain unprocessed, and expected times for IRS responses to taxpayers' and practitioners' correspondence by type of correspondence will alleviate some of the uncertainty taxpayers are experiencing.

Additionally, the IRS should provide regular, widely publicized updates on the progress being made towards achieving pre-pandemic inventory by the end of the year to help taxpayers and practitioners manage expectations for future filing deadlines.

CONTINUED USE OF SURGE TEAMS

The IRS has been reassigning employees temporarily to high volume areas, such as Accounts Management, to expedite the processing of tax returns. This step has provided much needed relief and is greatly appreciated. The IRS should continue the use of these surge teams to decrease the backlog and consider increasing the use of such teams. Given that the IRS has been granted direct hire authority for these positions, it should provide regular staffing updates on its website to communicate to the public on how many of the open positions have been filled, when new employees will begin working in their positions, and what the IRS's plan is for unfilled positions, particularly customer service and returns processing positions. The IRS should be flexible and consider increasing the number of surge teams if that appears necessary to ensure that the IRS can reach pre-pandemic backlog levels before the end of the year.

CONTINUED SUSPENSION OF IRS COLLECTIONS

The AICPA recommends that the IRS continue the suspension of certain automated compliance actions until it is prepared to devote the necessary resources for a proper and timely resolution of the matter. The IRS has indicated that it will restart these actions in the near future, including failure to deposit (FTD) notices for businesses restarting as soon as the end of June.⁸ Until the IRS is able to respond to taxpayer replies to notices in a timely manner, these compliance actions should not be restarted. In addition, once the IRS decides that it will restart automated compliance actions, they should communicate the state date to the public well in advance of the beginning of the startup.

After the expiration of the People First Initiative on July 15, 2020, the IRS's compliance cycle was not realigned to the postponed due date, mail and processing backlogs increased, and resource

⁸ Tax Notes Federal Volume 175, "[IRS Eyeing Process for Restarting Collection Notices](#)" May 23, 2022.

limitations existed, resulting in millions of incorrect notices and actions.⁹ Even with the recent suspension of many collection notices, taxpayers are still receiving collection notices or threatening liens or levies.

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

Moreover, the IRS has not indicated how long taxpayers and practitioners should expect to wait until receiving a response for their answers to a letter or notice (including submission of supporting documents). The last update regarding how long taxpayers and practitioners may have to wait was from January 13, 2021, and only stated that the “exact timeframe varies depending on the type of issue.”¹⁰ This leaves taxpayers in an uncertain position, with no knowledge of if, or when, their response has been processed.

The IRS must provide taxpayers and practitioners relief from the endless cycle of unnecessary and inappropriate notice and collection activities. The expanded suspension of automated collection notices announced on February 9, 2022, has provided relief for many taxpayers and practitioners, and is greatly appreciated.¹¹ The IRS should continue the suspension until it is able to respond to correspondence in a timely manner.

REASONABLE CAUSE REQUESTS

For taxpayers that have received failure to file or late payment penalty notices due to the monumental difficulties of COVID-19, the AICPA recommends the IRS offer a streamlined reasonable cause penalty waiver without requiring a written request, *similar to* the procedures of FTA administrative waiver, based solely on the COVID-19 effects on both the taxpayer and the practitioner.¹² This streamlined reasonable cause waiver should be available with respect to all types of penalties that are eligible for reasonable cause waiver, not just those penalties that are eligible for FTA. For instance, streamlined reasonable cause waivers should be available for information reporting penalties and penalties applicable to tax exempt entities that are eligible for reasonable cause relief.

COVID-19 is an extraordinary event unlike anything faced in recent history. Therefore, penalty relief based on a COVID-19 effect, and its lingering impact on IRS operations, should be based on reasonable cause and not based on FTA. A taxpayer should not be required to use up its

⁹ IRS, [IRS unveils new People First Initiative; COVID-19 effort temporarily adjusts, suspends key compliance program](#),” March 25, 2020.

¹⁰ IRS, “[IRS Operations During COVID-19: Mission-critical functions continue](#),” January 13, 2021.

¹¹ IRS, “[IRS continues work to help taxpayers; suspends mailing of additional letters](#),” February 9, 2022.

¹² We indicate “similar to” so that taxpayers who don’t qualify for FTA, including information return filers, will qualify for relief, and those who would otherwise qualify for FTA can reserve it.

eligibility for FTA relief for the next three years because the basis of their request for relief is due to COVID-19 effects or lingering impacts on IRS operations.

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. This is due to the use of the Reasonable Cause Assistor (RCA); a software tool used by IRS employees to determine a taxpayer's eligibility for FTA. The tool is programmed to first determine if the taxpayer is eligible for FTA, and if not, goes to the determination for reasonable cause. Thus, taxpayers are offered FTA first, even if the taxpayer qualifies for reasonable cause penalty relief.¹³ Certainly, there are taxpayers who were qualified for and requested reasonable cause relief in 2020 and 2021 who were instead 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, 2022 or the immediate future. To avoid this issue, the IRS should change the order of the analysis in the programming of the RCA so that it determines reasonable cause relief first, then determines if FTA is appropriate.

Finally, the IRS should make it well known (for instance, by issuing updated guidance in the IRM) to taxpayers, practitioners, and internal personnel that *written* reasonable cause requests can be faxed or e-faxed to IRS telephone assistors and that the assistor can grant reasonable cause relief relying on this faxed or e-faxed written request. Currently, most IRS telephone assistors refuse to accept written reasonable cause requests by fax or e-fax and are instructing taxpayers and their advisors to submit a written request by mail, which adds to the mail backlog and won't be acted on for many months.

The AICPA has heard from taxpayers and practitioners expressing concerns about a fourth straight "unprecedented" filing season if the IRS does not take additional action. We have been hearing more and more from members that taxpayers have been receiving incorrect notices, with few options to resolve the issues in a timely manner. Taxpayers and practitioners 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 COVID-19 and its lingering impacts for everyone in the tax system, including the IRS, more proactive procedures are needed.

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The AICPA is the world's largest member association representing the CPA profession, with more than 428,000 members in the United States and worldwide, and a history of serving the public

¹³ 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](#). Information on the RCA can be found at [Internal Revenue Manual 20.1.1.3.1](#).

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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 Sarah E. Adkisson, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9210 or Sarah.Adkisson@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lewis". The signature is fluid and cursive, with the first name "Jan" and last name "Lewis" clearly distinguishable.

Jan F. Lewis, CPA
Chair, AICPA Tax Executive Committee

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