American Institute of CPAs
1455 Pennsylvania Avenue, NW
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January 16, 2014

The Honorable Max Baucus, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Orrin G. Hatch, Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

RE: Tax Reform Discussion Draft on Tax Administration

Dear Chairman Baucus and Ranking Member Hatch:

The American Institute of Certified Public Accountants (AICPA) commends all Members of the Senate Committee on Finance on their continuing efforts to comprehensively reform the tax law, including improvements to tax administration, and to simplify the Internal Revenue Code (IRC or "Code").

The AICPA consistently has supported tax reform simplification efforts because we are convinced such actions will significantly reduce taxpayers' compliance costs, encourage voluntary compliance through a better understanding of the rules, and reduce the number of enforcement actions. We appreciate the opportunity to provide our comments on the Senate Committee on Finance Chairman's Staff Discussion Draft of Provisions to Reform Tax Administration ("Proposal").

Reforms Relating to Information Returns

<u>Accelerated Filing of Certain Returns</u>

The Proposal changes the due date of certain information returns to February 21 and recommends a study to consider administrative implementation issues, including whether other due dates should be accelerated to January 31.

The AICPA generally supports the acceleration of the due dates for filing information returns, including Forms W-2, Wage and Tax Statement, with the Internal Revenue Service (IRS). However, we are concerned about the use of a single deadline (e.g., February 21) for all information returns. To provide more flexibility, we recommend requiring the payer or employer to file all information forms with the IRS within 15 days of the due date to taxpayers. Such an acceleration of the due date to the IRS should increase the likelihood that the agency can properly match the reported information with amounts reported on tax returns, thereby reducing the risk of identity theft.

Moreover, we request that as soon as the Social Security Administration (SSA) receives the W-2 information, they immediately transfer the information to the IRS. This will allow the IRS to immediately match the reported information with amounts reported on tax returns.

Finally, we appreciate your consideration of a study on the acceleration of due dates for filing Forms W-2, W-3 and 1099 with the IRS and SSA to January 31. However, we note that accelerating the due date to January 31 for brokers would create problems in regard to properly identifying wash sales.[1] Brokers cannot properly identify wash sales until at least January 30. We believe a due date of January 31, merely one day later, would not provide brokers sufficient time to analyze, correct and properly report this information.

Safe Harbor for De Minimis Errors on Information Returns and Payee Statements

Under the Proposal, there is an exception for a corrected information return if a single error amount differs from the correct amount by no more than $25. In such case, the original return is treated as having been filed correctly. The AICPA generally supports safe harbor provisions for de minimis errors on information returns. However, to make an impactful difference on the number of corrected information returns filed, we suggest raising the misstatement threshold to $50, as also recommended in the 2013 Information Reporting Program Advisory Committee (IRPAC) Public Report.[2]

We also recommend reporting entities (including employers, partnerships, S corporations, estates and trusts) roll-over small information return errors, reported on Forms 1099 and W-2 and Schedules K-1, to the next year. We propose that Congress provides an exception to file or furnish a corrected information return in the current year if a single error amount differs from the correct amount by no more than $200. The payer would report the differential amount in the following year. The identified error and correction information should also include the original date and transaction to which it relates.

Unfortunately, the filing season last year was a tremendous challenge to practitioners due to the late issuance of corrected Forms 1099-B, Proceeds from Broker and Barter Exchange Transactions, and amended Forms 1099-DIV, Dividends and Distributions. This situation resulted in the preparation of immaterial amended tax returns during our busiest time of year. Although an amended Form 1040 can be filed after April 15th, clients wanted to either make certain they did not owe any late payment penalties or obtain their refund as soon as possible. Taxpayers were also anxious to get their filing obligations "behind them" without extensions, if possible.

Our members' clients are increasingly frustrated by the receipt of corrected information and the need to file an amended return. This unfortunate trend of receiving corrected forms, year after year, has resulted in some taxpayers providing tax return data to their preparers later than prior years to avoid having to file amended returns. As a result, tax preparers are faced with an increasingly compressed filing season.

The AICPA believes the increased de minimis safe harbor amount combined with the roll-over provision would streamline the tax return reporting process for both the government and taxpayers. The

[1] Under Code section 165, taxpayers are not permitted a deduction for any loss sustained from any sale or other disposition of stock or securities if the taxpayer acquires substantially identical stock or securities within a period beginning 30 days before the date of the sale or disposition and ending 30 days after that date.
[2] According to the 2013 IRPAC Committee Public Report, 59% of the corrected forms reported changes less than $50. The report also indicates 49% of the corrected forms reported changes less than $30 and 27% of the corrected forms reported changes of less than $10.

preparation, filing, processing and examining of amended returns is costly to everyone. These recommendations would make the entire process more efficient.

Internet Platform for Form 1099 Filings

The AICPA supports the proposal requiring the Secretary of the Treasury to make available, within three years of enactment, an internet website or other electronic media to allow taxpayers to prepare, file and distribute Forms 1099. Furthermore, we advise that the website make available to taxpayers all relevant Forms 1099 and Forms W-2 needed to file their tax return. We believe the website will reduce the cost of compliance, accelerate the receipt of information and enable the IRS to more efficiently and effectively match reported amounts against individual tax returns.

Requirement that Electronically Prepared Paper Returns Include Scannable Code

The AICPA supports the provision requiring taxpayers who prepare returns electronically, but file on paper, to print the returns with a scannable bar code. To clarify how the provision applies, the Committee may want to consider replacing the word "electronically" with the phrase "using computer software or internet based software."

Reforms Relating to Identity Theft and Tax Fraud

The AICPA strongly supports the Committee's efforts to combat identity theft and tax fraud. The growing amount of fraudulent tax refunds paid and the economic and emotional impact to individual victims of identity theft is unacceptable. Therefore, we appreciate and support the following provisions of the Proposal:

- Restriction on Access to the Death Master File – The Proposal provides for a program under which access is restricted to the information contained on the Death Master File (DMF). The President has signed the bill limiting access to the DMF and we believe this new law will reduce the number of fraudulent returns and related refunds.
- Single Point of Contact for Identity Theft Victims – The Proposal suggests a new procedure to implement a single point of contact for taxpayers affected by identity theft. We believe efficiencies will result as the single point of contact will identify areas of duplication and areas causing delays.
- Criminal Penalty for Misappropriating Taxpayer Identity in Connection with Tax Fraud – The Proposal makes it a felony under the Code for a person to use a stolen identity to file a return.
- Extend IRS Authority to Require a Truncated Social Security Number (SSN) on Form W-2 – The Proposal requires employers to include an identifying number for each employee rather than the use of the SSN. We recommend modification of the statutes that mandate the use of a SSN, IRS individual taxpayer identification number (TIN), or IRS adoption TIN[3] to allow the truncation of the identifying number. We also suggest modification of Code section 170(f)(12),

[3] An adoption TIN is a temporary identification number for a child in the process of an adoption where the SSN is not obtained or unattainable at that moment.

regarding contributions of cars, boats and airplanes, to allow the truncation of the SSN on the acknowledgement letter to the donor.

- Study of Expansion of PIN System for Prevention of Identity Theft Tax Fraud – The Proposal requests that a report be provided to the Senate Finance Committee and the House Ways and Means Committee on the current Identity Protection Personal Identification Number (IP PIN). We believe a review of industry practices to provide security of client personal information may reveal opportunities for the IRS to verify the taxpayer's identity.[4] As a priority, requiring taxpayers or returns requesting a refund (but not to apply an overpayment) to obtain an IP PIN would reduce fraudulent returns.

The AICPA previously provided detailed comments regarding the provisions for the single point of contact for victims, truncating SSN on Forms W-2 and the expansion of the IP PIN system. We also recommended limitations on multiple tax refunds to a single account and further validation of a taxpayer's address or change of address.[5] We understand that the immediate implementations of these measures are only the first steps and no system will completely eliminate identity theft and tax fraud. Nevertheless, we believe the long-term benefits in terms of direct cost savings and overall trust in the integrity of the tax system would offset the expense of establishing such a system.

Penalty for Failure to Meet Due Diligence Requirements for the Child Tax Credit

The Proposal provides for a penalty for tax return preparers who fail to comply with due diligence requirements in regards to the child tax credit under section 24.

The AICPA strongly believes that tax return preparers should comply with due diligence requirements. However, we believe the proposed enforcement provision is too narrow since it applies to only one type of tax credit.

Alternatively, we suggest expansion of section 6695, Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons, to include a general due diligence provision giving the IRS the ability to assess penalties when a preparer has failed to comply with the provision. If this recommendation is accepted, the need for specific due diligence penalties for failure in determining eligibility for specific credits would no longer be necessary. This change also subjects all preparers to the same general standard as in the AICPA's Code of Professional Conduct and Bylaws. Additionally, clarifying Circular 230 as to who is considered a practitioner practicing before the IRS would extend due diligence requirements to all tax return preparers.

[4] Treasury Inspector General for Tax Administration Report Detection Has Improved; However, Identity Theft Continues to Result in Billions of Dollars in Potentially Fraudulent Tax Refunds dated September 30, 2013. Reference Number: 2013-40-122.

[5] AICPA Comment letter dated June 27, 2013 on the Identity Theft and Tax Fraud Prevention Act of 2013 and Recommendations on Efforts to Combat Identity Theft. The AICPA most recently submitted comments on Truncated Taxpayer Identification Numbers to the IRS on February 20, 2013. See AICPA Testimony on Tax Fraud, Tax ID Theft and Tax Reform: Moving Forward with Solutions, April 16, 2013.

Clarification with Respect to Regulation of Federal Tax Return Preparers

The AICPA is supportive of the Proposal's amendment to clarify that the Department of the Treasury and IRS have authority to regulate unenrolled tax return preparers. We would like to work with the Committee to further explore alternatives to the proposed textual changes to 31 U.S.C. section 330.

Closing the Tax Gap

Additional Information on Returns Relating to Mortgage Interest

The AICPA supports the proposal to expand the information reported on the Mortgage Interest Statement, Form 1098. We think the additional information, such as unpaid balance and address of the property, will assist taxpayers in complying with the mortgage interest limitations.

Modification to Information Required on Returns for Higher Education Tuition and Related Expenses

The current information provided on Form 1098-T, Tuition Statement, is inadequate for either the preparation of the education tax credit schedules or for the IRS to match the credit claimed to amounts reported by the educational institution. As proposed, we support reporting tuition payments received by the educational institution on Form 1098-T. These amounts will assist the student/taxpayer in determining which, if any, tax incentive is available.

We also recommend reporting amounts paid for room and board on Form 1098-T. This information is helpful to taxpayers since these expenditures are eligible distributions from qualified tuition programs (529 plans) and education savings accounts.

Further simplification of higher education tax incentives, as recommended by the AICPA,[6] will also make it easier for students to determine which educational incentive they are eligible for, as well as simplify reporting requirements for educational institutions.

Expansion of Electronic Filing

The AICPA supports the provision to increase e-filing of returns and the increased authority for e-filing of employee benefit plan tax information. Many states already require tax return preparers to e-file taxpayer returns, therefore it is not overly burdensome to require e-filing of all individual tax returns prepared by a tax return preparer.

The Proposal also requests commentary on assessing a penalty for not e-filing an individual return. Since many individual taxpayers, particularly seniors, remain uncomfortable with the internet or do not have secure online connections, we do not support a penalty against individual taxpayers who prepare

[6] AICPA comment letter dated July 25, 2013, HR 2253 and S.1090, Higher Education and Skills Obtainment Act: AICPA Recommendations for Further Simplification of Higher Education Tax Incentives.

their own returns and do not e-file. In addition, the taxpayer should still have the ability to opt out of e-filing a return without subjecting the tax return preparer to a penalty.

Improvements to Tax Filing

The AICPA appreciates efforts to improve the tax return filing process. We believe the Proposal's changes to certain tax return due dates would better facilitate the flow of information between taxpayers and reduce the need for extended and amended corporate and individual tax returns. Both the Proposal and S. 420, a bill introduced by Senator Enzi, would improve the prospects for the timely filing of tax returns of individuals, partnerships, S corporations, and C corporations and correct the mismatch of information flow that persists in the system today.

However, we recommend revising language to the Proposal (Subtitle F, Section 51) to include the language in S. 420 "Section 3. Modification of Due Dates by Regulation." and "Section 4. Corporations Permitted Statutory Automatic 6-Month Extension of Income Tax Returns." The discussion draft is silent with regard to extended due dates and due dates for certain other forms, such as the Form 3520-A, Annual Information Return of a Foreign Trust with a United States Owner, and FinCEN Form 114 (formerly Form TD-F 90-22.1), relating to Report of Foreign Bank and Financial Accounts, which are included in S. 420. We recommend using the language in S. 420.[7] These important sections 3 and 4 of

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[7] See S. 420, Section 3. Modification of Due Dates By Regulation and Section 4. Corporations Permitted Statutory Automatic 6-Month Extension of Income Tax Returns provided below:
SEC. 3. MODIFICATION OF DUE DATES BY REGULATION.
In the case of returns for taxable years beginning after December 31, 2013, the Secretary of the Treasury or the Secretary's delegate shall modify appropriate regulations to provide as follows:

(1) The maximum extension for the returns of partnerships filing Form 1065 shall be a 6-month period beginning on the due date for filing the return (without regard to any extensions).
(2) The maximum extension for the returns of trusts and estates filing Form 1041 shall be a 5 1⁄2 month period beginning on the due date for filing the return (without regard to any extensions).
(3) The maximum extension for the returns of employee benefit plans filing Form 5500 shall be an automatic 3 1⁄2 month period beginning on the due date for filing the return (without regard to any extensions).
(4) The maximum extension for the Forms 990 (series) returns of organizations exempt from income tax shall be an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).
(5) The maximum extension for the returns of organizations exempt from income tax that are required to file Form 4720 returns of excise taxes shall be an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).
(6) The maximum extension for the returns of trusts required to file Form 5227 shall be an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).
(7) The maximum extension for the returns of Black Lung Benefit Trusts required to file Form 6069 returns of excise taxes shall be an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).
(8) The maximum extension for a taxpayer required to file Form 8870 shall be an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).
(9) The due date of Form 3520–A, Annual Information Return of a Foreign Trust with a United States Owner, shall be the 15th day of the 4th month after the close of the trust's taxable year, and the maximum extension shall be a 6-month period beginning on such day.
(10) The due date of FinCEN Form 114 (formerly TD F 90-22.1), relating to Report of Foreign Bank and Financial Accounts, shall be April 15 with a maximum extension for a 6-month period ending on October 15, and with provision for an extension

S. 420 include language clarifying, for example, that partnerships would have a 6-month extension until September 15th (for calendar-year partnerships) similar to the 6-month extension for other types of returns, and maintain the current September 15th extended due date for partnerships. Without such clarifying language, taxpayers (or the IRS) may interpret the provision to require an extended due date for partnership returns of August 15th as opposed to September 15th.

Additional Comments

The AICPA believes that opportunities exist to combine a number of the various Forms 1099 into a "K-1" type format. Such a step would provide information to taxpayers in a common, consistent format. Some improvements may require legislative action while other changes are possible through the IRS with their existing administrative authority. The AICPA is in the process of evaluating ways to improve information reporting through legislative and administrative action.

Generally, we recommend an effective date for these administrative provisions of January 1 of the second calendar year after the date of enactment. This timeline will ensure compliance with the provisions and sufficient time for taxpayers, third party reporting entities and the IRS to make processing and programming modifications.

Since many of these proposals are based on internet and e-government services, such as Internet Platform for Form 1099 Filings and Taxpayer Notification of Suspected Identity Theft, we recommend that the office of E-Government and Information Technology review the proposed changes to ensure consistency with the emerging best government practices on e-government or information technology.

In conclusion, the AICPA strongly supports the efforts by the Senate Committee on Finance on tax administration reform and simplification. To significantly reduce taxpayers' compliance costs, encourage voluntary compliance through an understanding of the rules, and facilitate enforcement actions, we suggest the Senate Committee on Finance consider the above proposals.

The AICPA is the world's largest member association representing the accounting profession, with more than 394,000 members in 128 countries and a 125-year heritage of serving the public interest. 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.

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under rules similar to the rules of 26 C.F.R. 1.6081–5. For any taxpayer required to file such form for the first time, the Secretary of the Treasury may waive any penalty for failure to timely request or file an extension.
(11) Taxpayers filing Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, shall be allowed to extend the time for filing such form separately from the income tax return of the taxpayer, for an automatic 6-month period beginning on the due date for filing the return (without regard to any extensions).

SEC. 4. CORPORATIONS PERMITTED STATUTORY AUTOMATIC 6-MONTH EXTENSION OF INCOME TAX RETURNS.
(a) IN GENERAL.—Section 6081(b) is amended by striking ''3 months'' and inserting ''6 months''.
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns for taxable years beginning after December 31, 2013.

The AICPA appreciates the opportunity to provide comments as part of the tax reform process. If you have any questions, please contact me at (304) 522-2553, or jporter@portercpa.com; or you may contact Patricia Thompson, Chair of the AICPA Effective Tax Administration Task Force, at (401) 831-0200, or patt@pgco.com; or Melanie Lauridsen, AICPA Technical Manager, at (202) 434-9235, or mlauridsen@aicpa.org.

Sincerely,

Jeffrey A. Porter, CPA
Chair, AICPA Tax Executive Committee

cc: Senate Committee on Finance Members
House Ways and Means Committee Members
The Honorable John Koskinen, Commissioner, IRS
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Treasury Department
The Honorable William J. Wilkins, Chief Counsel, IRS