



September 8, 2022

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

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

Mr. William M. Paul  
Principal Deputy Chief Counsel  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20044

RE: Notice 2022-36 Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020 and Requested Relief Expansion, Modification, and Clarification

Dear Ms. Batchelder, Mr. Rettig, and Mr. Paul:

On behalf of the American Institute of CPAs (AICPA), we are writing to express our appreciation that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2022-36](#) “Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020,” (released August 24, 2022) and the related Internal Revenue Manual (IRM) Procedural Update ([sbse-20-0822-0912](#), dated August 25, 2022). Although we appreciate the relief provided, we have serious concerns about the deadline provided and the scope of relief provided in Notice 2022-36. This letter is in addition to our [August 30, 2022 letter](#), requesting extension of the September 30, 2022 deadline to December 31, 2022.<sup>1</sup>

As we stated in our August 30 letter, we are pleased that IRS has provided some measure of COVID-19 related penalty relief for taxpayers. We applaud the unprecedented waiver of the failure to file penalty under section 6651(a)(1).<sup>2</sup> And we praise the IRS for waiving certain international information reporting penalties under sections 6038, 6038A, 6038C, 6039F and 6677. As the AICPA has been requesting in various letters to IRS and Congress and through our multi-year dialogue with IRS on Form 3520 penalties, the automatic (no taxpayer action needed) limited blanket penalty relief provided will save the IRS resources by eliminating unnecessary penalties and response processing and also by promoting voluntary compliance.<sup>3</sup> Additionally, significant taxpayer burden will be reduced by waiving the penalties covered by Notice 2022-36.

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<sup>1</sup> See AICPA Letter, [“Notice 2022-36 Penalty Relief for Certain Taxpayers Filing Returns for Taxable years 2019 and 2020 and Request for Deadline Extension,”](#) August 30, 2022.

<sup>2</sup> Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

<sup>3</sup> See AICPA letters, [“Additional Measures to Address Backlog,”](#) July 11, 2022, [“Written Statement](#) for Hearing before U.S. Senate Committee on Finance on Spotlighting IRS Customer Service Challenges,” February 17, 2022, [“AICPA](#)

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In addition to our August 30, 2022 letter, requesting that the deadline be extended to December 31, 2022, we suggest in this letter several modifications to Notice 2022-36 and request that IRS go beyond Notice 2022-36 and issue a further Covid and backlog penalty relief package, providing blanket reasonable cause relief for 2019 and 2020 tax years, including relief for situations where IRS cannot easily identify taxpayers with penalties to be relieved, and IRS needs taxpayers to identify themselves for such relief. In addition, we suggest several clarifications to Notice 2022-36.

Our requested expansion and clarification of the relief include:

1. Expand the Scope of Relief to Include Similarly Situated Taxpayers in Another Stage of the Process
  - a. Include Non-Automatically Assessed Penalties
  - b. Include Amended Returns
  - c. Include All International Information Returns, Including Delinquent International Information Return Submission Procedures (DIIRSP):
2. Expand Scope of Relief to Additional Penalties and Additional Returns
  - a. Include Additional Code Sections, Including Section 6651(a)(2) Failure to Pay Penalty
  - b. Include Additional Forms
3. Expand the Scope of Relief to Additional Years
4. Clarify that this Relief Is Not Considered First-Time Abate (FTA) and Reinstate Ability to Use First-Time Abate Status if Used for a Situation that Notice 2022-36 Provides Relief
5. Notify Taxpayers of Meeting the Criteria for Relief
6. Provide Clarifications to Notice 2022-36

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[Statement](#) on Recent IRS Announcement,” January 27, 2022, “[AICPA Statement](#) on AICPA Calls on IRS to Do More,” January 10, 2022, “[H.R. 5155, Taxpayer Penalty Protection Act of 2021](#),” September 3, 2021, “[Additional Penalty Relief Measures](#),” May 17, 2021, “[Certainty and Relief Needed for the 2020 Tax Year](#),” February 23, 2021, “[Underpayment and Late Payment Penalty Relief for 2020 Tax Year](#),” February 16, 2021, “[Relief from Coronavirus Related Penalties](#),” December 7, 2020, “Written [Statement](#) for November 20, 2020 Hearing of U.S. House Ways and Means Committee Oversight Subcommittee with the Commissioner of the Internal Revenue Service,” December 2, 2020, “[Penalty Relief for 2019 Tax Year Filing Season](#),” November 5, 2020, and “[Recommendations for Phase Four Federal Legislation Addressing COVID-19 \(Coronavirus\) Pandemic](#),” July 20, 2020.

- a. For Form 3520 and Form 3520-A, in Addition to Section 6677, Reference Filings Required by Section 6048
- b. For Form 990-PF, Reference Section 6652(c) or Clarify Which Sections are Covered for Form 990-PF
- c. Include an Explanation of How the Notice Applies to Fiscal Year Filers
- d. Include an Explanation of How the Notice Applies to Returns Filed Prior to the Date the Notice was Issued
- e. Clarify the Non-International Information Returns Covered in the Notice's Relief

### **Specific Comments**

We request modification, expansion, and clarification of the scope to Notice 2022-36 based on our below issues and concerns.

- 1. Expand the Scope of Relief to Include Similarly Situated Taxpayers in Another Stage of the Process**
  - a. Include Non-Automatically Assessed Penalties**

It appears that the Notice provides automatic penalty relief and refunds premised on IRS system indicators that will allow identification of eligible taxpayers, which is helpful and should be seamless.

We are pleased that the IRM update provides that “The relief applies to originally filed returns with a [failure to file] FTF penalty related to an examination assessment and/or non-filers per current policy and precedent.”<sup>4</sup> IRS should clarify in a Notice that the relief applies to those penalties that are automatically assessed, and also includes penalties assessed at other stages (i.e., Examination). If a taxpayer is in an examination and they meet the criteria in the Notice and filed the return by September 30, they should qualify for penalty relief as well. Even if they are in a different process (e.g., Examination, Appeals (including Collection Appeals), and Collection), they should qualify for relief under the Notice. IRS Exam Revenue Agents also should thoroughly consider the principles set forth in Notice 2022-36 when considering penalties.

We suggest that other returns should qualify for relief even if the IRS system can't automatically find them.

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<sup>4</sup> IRM Procedural Update Number: [SBSE-20-0822-0912](#), adding new IRM subsection [IRM 20.1.1.3.3.2.2](#).

To do this, the IRS should go beyond Notice 2022-36 and issue an additional Covid and backlog penalty relief package, providing blanket reasonable cause relief for all penalties imposed during the 2019 and 2020 tax years.

In the meantime, the IRS should immediately modify Notice 2022-36 to remove the preference for relief only if IRS systems can identify the taxpayer and extend penalty relief coverage to penalties with respect to all Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, and Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, regardless of whether the penalty was systemically imposed, as well as other similar international forms where penalties are not systemically imposed, such as Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Similarly, information returns listed in section 6724(d) should be eligible for penalty waiver under the Notice even if they are not filed by August 1 of the year the returns were due. While this is a convenient marker for the IRS to provide automatic relief, it does not realistically consider the effect of the hardships of the pandemic. Identification that returns haven't been filed during the pandemic (with office closures, reduced staff, unreliable mail delivery) often doesn't occur until a penalty notice arrives, which is after the August 1 date.

The section 6721 penalties are imposed not only if returns are filed late, but they are imposed if there are incorrect or missing taxpayer identification numbers. These errors are also made because of the hardships imposed by the pandemic.

For these reasons, relief under section 6721 should be granted for any tax years covered by penalty relief for income tax returns so long as the late returns are filed by the due date for income tax returns eligible for relief.

**b. Include Amended Returns**

Amended returns filed by the relief deadline<sup>5</sup> should qualify the same as an original filed return. IRS should provide relief for amended returns to give similar treatment for similar returns.

**c. Include All International Information Returns, Including Delinquent International Information Return Submission Procedures (DIIRSP)**

IRS should expand the relief to cover more than just a few international information returns listed in the notice – all international information returns should be included. Similarly situated taxpayers should be treated the same. Horizontal equity is critical for a fair and

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<sup>5</sup> September 30, 2022, unless otherwise extended.

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just tax system. Treating similarly situated taxpayers differently is against IRS policy and fairness, which is one of the AICPA principles of good tax policy.<sup>6</sup>

For example, IRS should clarify, or provide, that taxpayers who filed amended returns, such as an amended Form 1120 or an amended Form 1065 for purposes of including a delinquent Form 5471 or delinquent Form 5472, as applicable, and utilizing the Delinquent International Information Return Submission Procedures (DIIRSP) by the relief deadline, qualify for the same relief as other filers for Form 5471 and Form 5472 by the relief deadline.

A late Form 1120 with a late Form 5471 that is filed before the relief deadline under the Notice will have no penalty assessed as the Notice currently only provides for relief for international information return penalties when they are associated with an untimely Form 1120 or Form 1065. In contrast, without IRS providing clear relief, a timely filed Form 1120 with a late Form 5471 that is corrected with an amended Form 1120 and late Form 5471 filed before the relief deadline may still face a penalty. The only difference between these scenarios is that in the first situation, the penalty is systemically assessed and in the other situation, it is not. That seems like an arbitrary line to draw. The IRS should provide relief for international information returns penalties for late filings of Form 5471 or Form 5472 where the related income tax return was timely filed. The current Notice leads to the odd situation where taxpayers are better off having not timely filed a tax return or information return than those that attempt to correct a mistake with an amended return.

IRS should also provide relief for Form 5471 and Form 5472 filed with other forms in addition to Form 1120 or Form 1065, including when attached to Form 1040, U.S. Individual Income Tax Return, Form 1041, U.S. Income Tax Return for Estates and Trusts; Form 1120S, U.S. Income Tax Return for an S Corporation, Form 990, Return of Organization Exempt From Income Tax, Form 990-T, Exempt Organization Business Income Tax Return, and Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation. We note that IRS relief that distinguishes between similarly situated taxpayers solely because one group was penalized automatically and the other is in a different stage in the process is an abuse of discretion, and the IRS risks significant litigation hazards if they do not rectify this situation immediately.

In addition, clarity is needed as to what constitutes a “late filed” Form 1120 for purposes of Notice 2022-36. For example, the Form 5472 instructions require the filing of a pro forma Form 1120 and attaching the Form 5472 for a foreign person who owns 100% of a U.S. limited liability company (LLC), which is characterized as not separate from its owner for U.S. federal income tax purposes (i.e., a disregarded entity). IRS should clarify whether the U.S. LLC that did not file such Form 1120 is considered a “late filed” Form 1120 for

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<sup>6</sup> See AICPA Tax Policy Concept Statement 1: [Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals](#), 2017.

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purposes of Notice 2022-36 even though they do not technically have an income tax return filing requirement (and therefore no late filed Form 1120).

## 2. Expand Scope of Relief to Additional Penalties and Additional Returns

### a. Include Additional Code Sections, Including Section 6651(a)(2) Failure to Pay Penalty

We appreciate the IRS addressing various international information reporting penalties under sections 6038, 6038A, 6038C, 6039F and 6677 in Notice 2022-36. Additional sections should be covered.

We urge the IRS to expand the relief under Notice 2022-36 to penalties under the following Code sections: 6038B, 6038D, 6048, 6651 (including 6651(a)(2)), and 6652<sup>7</sup>.

We appreciate the IRS providing relief from failure to file for years 2019 and 2020; however, as we have previously requested, we urge the IRS to expand the relief to also cover the section 6651(a)(2) failure to pay penalty as well.<sup>8</sup> We think there are many taxpayers who sent payments to IRS but due to the IRS backlog or post office delays or other delays with banks, etc., IRS didn't receive or record the payment timely (or IRS said it was not received timely). There are many checks that are still sitting in unopened envelopes, and there is concern that the IRS employees may make mistakes and process payments not with the dates the envelopes were mailed, but with the dates the envelopes were received or opened. Relief should be provided for failure to pay where a taxpayer was suffering COVID hardship, including was ill from COVID, and paid late. We suggest that relief be provided for failure to pay if payment was received by IRS by a certain date after the due date.

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<sup>7</sup> The notice should affirmatively add relief to penalties under section 6652 such that the exempt sector is treated the same as the for-profit sector. The Notice 2022-36 should be updated to include a new Section 3.A.(5) that includes:

(5) Additions to tax under section 6652 for failure to file the following income tax returns:

- Form 990, Return of Organization Exempt from Income Tax;
- Form 990-EZ, Short Form Return of Organization Exempt from Income Tax;
- Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; and
- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.

<sup>8</sup> See AICPA letters, "[Additional Measures to Address Backlog](#)," July 11, 2022, "[Written Statement](#) for Hearing before U.S. Senate Committee on Finance on Spotlighting IRS Customer Service Challenges," February 17, 2022, "[AICPA Statement](#) on Recent IRS Announcement," January 27, 2022, "[AICPA Statement](#) on AICPA Calls on IRS to Do More," January 10, 2022, "[H.R. 5155, Taxpayer Penalty Protection Act of 2021](#)," September 3, 2021, "[Additional Penalty Relief Measures](#)," May 17, 2021, "[Certainty and Relief Needed for the 2020 Tax Year](#)," February 23, 2021, "[Underpayment and Late Payment Penalty Relief for 2020 Tax Year](#)," February 16, 2021, "[Relief from Coronavirus Related Penalties](#)," December 7, 2020, "[Written Statement](#) for November 20, 2020 Hearing of U.S. House Ways and Means Committee Oversight Subcommittee with the Commissioner of the Internal Revenue Service," December 2, 2020, "[Penalty Relief for 2019 Tax Year Filing Season](#)," November 5, 2020, and "[Recommendations for Phase Four Federal Legislation Addressing COVID-19 \(Coronavirus\) Pandemic](#)," July 20, 2020.

**b. Include Additional Forms**

The Notice should include relief for originally filed forms and amended filings of other forms. Relief should be provided for forms subject to failure to file penalties as well as forms not subject to failure to file penalties, but rather subject to daily delinquency penalties (i.e., Form 990, Return of Organization Exempt From Income Tax, Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Person, and Form 990-EZ, Short Form Return of Organization Exempt from Income Tax).

IRS should provide relief at least for the forms that we have identified below (we may identify others):

- Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706-A, United States Additional Estate Tax Return, Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions, Form 706-GS(D-1), Notification of Distribution From a Generation-Skipping Trust, Form 706-GS(T), Generation Skipping Transfer Tax Return for Terminations, Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, Form 706-CE, Certification of Payment of Foreign Death Tax, Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return (Estate of nonresident not a citizen of the U.S.);
- Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return;
- Form 720, Quarterly Federal Excise Tax Return;
- Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation;
- Form 940, Employer's Federal Unemployment (FUTA) Tax Return, Form 940-PR, Employer's Annual Federal Unemployment (FUTA) Tax Return (Puerto Rico Version), Form 941, Employer's Quarterly Federal Tax Return, Form 941-PR, Employer's Quarterly Federal Tax Return (Puerto Rico Version), Form 941-SS, Employer's Quarterly Federal Tax Return - American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, Form 941-X (PR), Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund (Puerto Rico Version), Form 943, Employer's Annual Tax Return for Agricultural Employees, Form 943-A, Agricultural Employer's Record of Federal Tax Liability, Form 943-PR, Employer's Annual Federal Tax Return for Agricultural Employees (Puerto Rico Version), Form 943-X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund; Form 943-X (PR),

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- Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund (Puerto Rico Version); Form 944, Employer's Annual Federal Tax Return, Form 944 (SP), Employer's Annual Federal Tax Return (Spanish Version), Form 944-X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund, Form 944-X (SP), Adjusted Employer's Annual Federal Tax Return or Claim for Refund (Spanish Version), Form 945, Annual Return of Withheld Federal Income Tax, Form CT-1, Employer's Annual Railroad Retirement Tax Return, and Form CT-1X, Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund;
- Form 990, Return of Organization Exempt From Income Tax, Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, Form 990-EZ, Short Form Return of Organization Exempt from Income Tax; and Form 990-PF,<sup>9</sup> Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation;<sup>10</sup>
  - Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts;
  - Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons;
  - Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code;
  - Form 5227, Split-Interest Trust Information Return;
  - Form 5471 and Form 5472 when attached to Form 1040, Form 1041, Form 1120S, Form 990, Form 990-T, Exempt Organization Business Income Tax Return, or Form 990-PF;
  - Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests;
  - Form 8804, Annual Return for Partnership Withholding Tax (Section 1446);
  - Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs), and Form 8865;

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<sup>9</sup> We are pleased that Form 990-PF was included in Notice 2022-36. We are including Form 990-PF in this list of needed additional relief because in Notice 2022-36, Form 990-PF was only relieved from section 6651(a) penalties and needs to be included in a modification to Notice 2022-36 to provide relief for Form 990-PF from section 6652 penalties.

<sup>10</sup> We note that charities were impacted particularly hard during the pandemic and the daily delinquency penalty affected many of them.



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- Form 8938, Statement of Foreign Financial Assets;
- FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR); and
- Non-campus assessment program penalties for Forms 3520 and 3520-A.

### **3. Expand the Scope of Relief to Additional Years**

We appreciate the IRS addressing tax years 2019 and 2020, two extraordinary years impacted by the COVID-19 pandemic. With the Delta and Omicron variants of COVID-19,<sup>11</sup> many taxpayers continued to experience the harmful effects of the pandemic in 2021 and into 2022. The federal government has readily acknowledged that even in 2022, the pandemic is not over. In particular, high incidents of COVID-19 outbreaks were well-documented in the winter and spring of 2021-2022, during the height of filing season for information returns and income and employment tax returns. Accordingly, we urge the IRS to expand relief to additional tax years, including 2021.

In addition, given the IRS general inability to handle reasonable cause requests, including relating to international information reporting penalties for pre-2019 tax returns, we urge the IRS to expand relief, including for international information reporting penalties, to tax years 2016 through 2018, and 2021.

### **4. Clarify that this Relief Is Not Considered First-Time Abate (FTA) and Reinstate Ability to Use First-Time Abate Status if Used for a Situation that Notice 2022-36 Provides Relief**

We concur with the IRS National Taxpayer Advocate blog dated August 24, 2022, which states:

The relief does not fall into the category of either the First Time Abatement (FTA) or reasonable cause relief. FTA is an administrative waiver that provides otherwise-compliant taxpayers relief from penalties if certain criteria are met. The policy behind FTA is to reward taxpayers for having a clean compliance history, while recognizing that taxpayers occasionally make a mistake. The [reasonable cause defense](#) to the assertion of penalties, which is defined in the Internal Revenue Code, generally is based on the taxpayer's facts and circumstances in determining if a taxpayer exercised ordinary business care and prudence. The current penalty relief program will neither preclude taxpayers from receiving FTA for the next three years nor require justification, as would be the case with a request for reasonable cause. It is simply a favorable grant of administrative forbearance

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<sup>11</sup> See Centers for Disease Control and Prevention (CDC) media statement, "[New COVID-19 Vaccine Effectiveness Data Showcase Protection Gained by 3rd and 4th Doses](#)," July 15, 2022. and CDC webpage "[SARS-CoV-2 Variant Classifications and Definitions](#)," April 26, 2022.

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that the IRS is providing to benefit taxpayers and to address its own administrative burdens.<sup>12</sup>

We are therefore pleased that the IRM update provides:

9. When determining if a taxpayer is eligible to receive First Time Abate (FTA) penalty relief, the following pertains to the 2019 and/or 2020 tax year:
  - o Disregard the [failure to file] FTF (TC166/160) assessed on or before September 30, 2022.
  - o Disregard a prior FTA penalty relief (with PRC 018/020) applicable only for FTF penalty relief granted on or before September 30, 2022.<sup>13</sup>

We suggest that IRS clarify this information in an updated Notice saying the Notice relief is not considered as using first-time abatement (FTA) for a taxpayer.

In addition, we ask IRS to reconsider what it has included in the IRM update: “if both the [failure to file] FTF and failure to pay (FTP) penalties were granted relief under FTA on or before September 30, 2022, the FTA will NOT be disregarded since the FTA administrative waiver applies to the module and is not penalty specific.”<sup>14</sup> We think taxpayers who would qualify for the Notice automatic relief but who already used their FTA for a 2019 or 2020 tax return should have their account coding automatically changed so that the relief for 2019 and 2020 does not count against FTA requests for 2021-2023. IRS should allow a taxpayer who would have been in the same situation as those qualifying for relief under the Notice (and likely should not have been charged a penalty at all), but who already used their FTA to eliminate a penalty for a 2019 or 2020 return to have their FTA option to use for another situation. For example, returns for 2019 were filed a few weeks late and the taxpayer used FTA to waive the penalty.

## 5. Notify Taxpayers of Meeting the Criteria for Relief

The Deputy Commissioner, Services and Enforcement, and the Chief of Appeals should send a joint directive to all their employees explaining that for any cases that meet the criteria for automatic relief, the taxpayer or authorized representative should be contacted to inform them that penalties have been waived. In addition, IRS employees should be instructed that any cases that meet the relief for returns filed before September 30 but are not on the Notice for automatic relief should receive penalty relief and immediate abatement for assessed penalties (i.e., Form 5471 or Form 5472 filed with a Form 1040 or Form 1041).

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<sup>12</sup> See the IRS National Taxpayer Advocate (NTA) blog, “[Good News: The IRS Is Automatically Providing Late Filing Penalty Relief for Both 2019 and 2020 Tax Returns. Taxpayers Do Not Need to Do Anything to Receive this Administrative Relief.](#)” August 24, 2022.

<sup>13</sup> IRM Procedural Update Number: [SBSE-20-0822-0912](#), adding new IRM subsection [IRM 20.1.1.3.3.2.2](#).

<sup>14</sup> IRM Procedural Update Number: [SBSE-20-0822-0912](#), adding new IRM subsection [IRM 20.1.1.3.3.2.2](#).

**6. Provide Clarifications to Notice 2022-36, Including:**

**a. For Form 3520 and Form 3520-A, in Addition to Section 6677, Reference Filing Required by Section 6048**

Although the Notice references the Code sections imposing the penalties rather than the Code sections imposing the filing requirements, we suggest IRS update the Notice to clearly state that there is penalty relief under section 6677 for Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520A, Annual Information Return of Foreign Trust With a U.S. Owner, *required by section 6048*.

**b. For Form 990-PF, Reference Section 6652(c) or Clarify Which Sections are Covered for Form 990-PF**

As we stated in our letter in 2.a. above, IRS should expand Notice 2022-36 to cover section 6652. The Notice references penalty relief under section 6651 for a late filed Form 990-PF. The late filing of Form 990-PF normally falls under section 6651(a) and section 6652(c), so we suggest that IRS clarify that the Form 990-PF relief applies to section 6651(a) and section 6652(c).

If the expanded relief to section 6652 for the Form 990-PF is not provided, IRS should at least clarify Notice 2022-36 to state that for a late filed Form 990-PF, the relief is only for section 6651(a) (e.g., the section 4940 excise tax) and not for section 6652.

**c. Include Reference to Fiscal Year Filers**

We are pleased that the NTA blog has been updated to state: “Business taxpayers with fiscal years will likewise be eligible for two years of relief for their fiscal years ending 2019 and 2020, respectively.”<sup>15</sup> We are also pleased that the IRM seems to be applying the Notice also to fiscal years beginning in 2018 if the year ends in 2019.<sup>16</sup> However, the same IRM appears to have inadvertently excluded some fiscal years that begin in 2020, i.e., when their year-end does not end in 2020. According to section 7701(a)(23), the fiscal year is the calendar year in which the fiscal year ends. For example, the penalty relief

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<sup>15</sup> See the IRS National Taxpayer Advocate (NTA) blog, “[Good News: The IRS Is Automatically Providing Late Filing Penalty Relief for Both 2019 and 2020 Tax Returns. Taxpayers Do Not Need to Do Anything to Receive this Administrative Relief.](#)” August 24, 2022, updated as of September 6, 2022, with a correction on fiscal years, stating: “Correction: The original version of this blog misstated the periods for which business taxpayers that operate on a fiscal year may qualify for late-filing penalty relief. The original version of the blog stated they qualify for fiscal years *beginning* in 2019 and 2020. In fact, penalty relief is available for fiscal years *ending* in 2019 and 2020.”

<sup>16</sup> IRM Procedural Update Number: [SBSE-20-0822-0912](#), adding new IRM subsection [IRM 20.1.1.3.3.2.2](#). See para 1 thereunder, 2<sup>nd</sup> bullet.

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should apply to a taxpayer with a March 31, 2021 period fiscal year-end corporation that files its 2020 Form 1120 return late but by September 30, 2022. IRS should clarify that the Notice and relief periods of 2019 and 2020 tax returns includes fiscal year filers.

In addition, fiscal years that required a tax filing in 2019, 2020, 2021, or 2022 should be covered because of the hardships of COVID.

**d. Include Reference to Returns Filed Prior to the Notice**

IRS should clarify that returns filed prior to the date Notice 2022-36 was issued and meeting the criteria of the Notice are eligible for the Notice's relief.

**e. Clarify the Non-International Information Returns Covered in the Notice's Relief.**

IRS also should clarify that various non-international information returns (i.e., no tax payments due with the return, but the returns could be subject to late filing penalties) are covered by the Notice as the Form 1099 was listed but all the forms listed in section 6724(d) should be included as well.

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The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 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.

If you have any questions, please contact Rochelle Hodes, Chair, AICPA IRS Advocacy and Relations Committee, at (202) 552-8033 or [Rochelle.Hodes@crowe.com](mailto:Rochelle.Hodes@crowe.com); Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or [Irene.C.Estrada@pwc.com](mailto:Irene.C.Estrada@pwc.com); Eileen Sherr, AICPA Director – Tax Policy & Advocacy, at (202) 434-9256 or [Eileen.Sherr@aicpa-cima.com](mailto:Eileen.Sherr@aicpa-cima.com); or me at (601) 326-7119 or [JanLewis@HaddoxReid.com](mailto:JanLewis@HaddoxReid.com).

Sincerely,



Jan Lewis, CPA  
Chair, AICPA Tax Executive Committee

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Mr. William M. Paul  
September 8, 2022  
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