



January 24, 2019

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

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

**RE: Effect on Taxpayers and Tax Practitioners of the Shutdown of the Internal Revenue Service**

Dear Secretary Mnuchin and Commissioner Rettig:

Our members have expressed concerns regarding the effect of the shutdown of the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) on taxpayers and tax practitioners. We recognize and appreciate your efforts to address the most crucial operations of the agency. However, the need for unhindered availability of a fair and administrable tax system is rising as we approach the opening of tax filing season.

The AICPA recognizes the inherent and systemic limitations both Treasury and the IRS face during the shutdown. Nonetheless, we urge you to consider additional steps to reduce the harmful effect on the public. In support of this effort, we identify some of the more common challenges that CPAs are already facing and offer recommendations to mitigate the long-term effect of the shutdown where appropriate.

**EFFECT ON TAXPAYERS AND TAX PRACTITIONERS**

The AICPA wants to share feedback regarding the effect of the government shutdown on this year’s tax filing season. According to our members, many IRS services and processes are not functioning, or are not functioning at their normal levels, which creates more problematic issues. The most common challenges identified are as follows:

**1. Automated Notices**

IRS continues to mail *automated* IRS collection notices, automated warnings of asset seizures, and Notices of Intent to Levy, as well as automatically transferring cases to collections, when there is no staff to respond to taxpayers’ attempted replies to resolve the issue or prevent the IRS threatened action from occurring. Taxpayers and tax practitioners are unable to speak to a collections agent in order to obtain a continuance or have a hold placed on the notice. In addition, faxes from taxpayers and tax practitioners are not accepted during this time.

## **2. IRS Audits & Appeals**

IRS has suspended all audit, examination, and appeals activity (unless the statute of limitations will expire). Unfortunately, this suspension means that tax practitioners are unable to communicate with IRS employees to timely resolve taxpayers' audit issues. Taxpayers and tax practitioners want to quickly resolve disputes as opposed to extending this process, which sometimes creates uncertainty or even anxiety for taxpayers. There is also concern that if the IRS ultimately makes an adjustment that is unfavorable to the taxpayer, the government will have unnecessarily subjected the taxpayer to additional interest and penalties during the period of the shutdown.

During the suspension, 90-day letters from the IRS will continue to expire. Generally, the IRS sends out a notice to taxpayers close to the expiration of the statute of limitations for taxpayers to agree to extend the statute of limitations. It is uncertain how the IRS will treat expirations of response deadlines and statute of limitations during the shutdown.

In addition, IRS anticipates an increased backlog of correspondence cases. According to the [IRS website](#), IRS is "responding to paper correspondence to only a very limited degree during this lapse period. Taxpayers who mail correspondence to the IRS during this period should expect a lengthy delay for a response after the IRS reopens due to a growing correspondence backlog." Without a shutdown, it often takes multiple contacts with the IRS to resolve a situation. We expect tremendous additional time to work with the IRS on correspondence once the shutdown ends.

## **3. Online Systems and Accounts**

Taxpayers and tax practitioners are experiencing difficulty accessing and using the Electronic Federal Tax Payment System (EFTPS). Although the IRS EFTPS [website](#) states that EFTPS is operating during the shutdown, taxpayers and tax practitioners have reported interruptions. Although the service is operated by third party providers, interaction with IRS personnel or other services is sometimes also needed causing challenges for users.

The website states that "tax payment is due regardless of this Web site's [sic] availability." However, when the electronic systems are not able to accept tax payments, the government is not able to efficiently and effectively collect its revenue, and the taxpayer is not able to easily meet its federal tax obligation. If the taxpayer is required to mail a tax payment they were expecting to pay electronically, it is possible that the additional time in the mail could result in the assessment of interest and penalty.

Additionally, taxpayers and tax practitioners need, but are not able, to timely access IRS transcripts for verifying financial information when preparing tax returns or for addressing time-sensitive audit correspondence. IRS transcripts are crucial to tax practitioners in tax compliance as taxpayers often do not have access to their own tax data – for example, in disaster situations – and the tax transcript is the only source of reliable information to prepare their tax return or respond to IRS notices.

In another area, according to our members, the Centralized Authorization File (CAF) unit is not operating. The CAF unit processes the [Form 2848](#), Power of Attorney and Declaration of Representative, which allows tax practitioners to act on behalf of taxpayers. The power of attorney (POA) is necessary for CPAs to request tax documents from the IRS. For example, it is needed when the client does not have a prior year return or if there is an identity theft situation.

To access a taxpayer's transcripts online during the shutdown, the tax practitioner needs an existing POA on file with the IRS. If there is no existing POA within the IRS's system, tax practitioners cannot use e-services to obtain important tax documents. Even if the tax practitioner has an existing POA on file, if e-services does not properly reflect that the CAF authorization is on file, there is no IRS staff available to address the situation. Because the transcript telephone line also is not operating, calling the IRS to obtain a transcript is another option that is now unavailable.

#### **4. Limited Assistance Available**

The Practitioner Priority Services (PPS), including its telephone assistance, is not currently operating. Once it is operating during the filing season, it likely will have inadequate staffing to resolve issues on a timely basis and we expect long delays, especially with the backlog of correspondence from the past month that PPS has not addressed.

Live telephone customer service assistance for taxpayers is also currently unavailable, and IRS walk-in taxpayer assistance centers (TACs) are closed. The IRS plans to add staff to answer some of the telephone lines. However, due to the heavier call volume, IRS has [warned](#) taxpayers to prepare for longer wait times. With TACs closed, the IRS is unable to handle large cash payments or assist identity theft victims required to visit an IRS office to establish their identity. In-person assistance is also not available for taxpayers experiencing a hardship.

Furthermore, according to the filing season contingency plan, IRS National Taxpayer Advocate Service (TAS) staffing is limited to only one local Taxpayer Advocate and one Taxpayer Advocate Group Manager or Lead Case Advocate in each TAS office. Taxpayers and tax practitioners often turn to the TAS when they are not able to get a resolution of an issue with IRS directly. During filing season especially, a fully-functioning TAS is key to resolving IRS issues effectively.

#### **5. Tax Cuts and Jobs Act (TCJA) Implementation Forms and Guidance Slowdown**

As we noted in our January 30, 2018 [comments](#) to Congress on ensuring Treasury and IRS have the appropriate resources to provide taxpayer services and guidance regarding TCJA, tax practitioners and taxpayers need guidance to comply with their tax obligations and make informed decisions with regards to cash-flow, entity structure, retirement, wealth transfer and other tax planning issues. IRS has more guidance to provide for 2018 tax returns. For example, business owners and individual taxpayers that will itemize their deductions need guidance on the changes regarding various deductions and business income.

According to the filing season contingency plan, there are only 346 excepted staff in the Chief Counsel's office (including 56 excepted because their activities concern the TCJA). With limited staff working on TCJA implementation, a slowdown in releasing crucial guidance seems likely. Many tax forms and instructions are also still in the "draft" stage and pending approval or remain in a non-submittable format, likely resulting in problems with filing season readiness of tax preparation software.

## **6. Other Challenges**

Our members continue to identify other challenges. For example, the IRS is not certifying any individuals for passport eligibility. In 2018, IRS started certifying taxpayers with delinquent tax debts exceeding \$50,000, and if the taxpayer did not resolve the debt or initiate an installment payment with the IRS, the Department of State may not issue a U.S. passport or could revoke a current U.S. passport. With the certification process shutdown, affected individuals may not have the option of resolving their debt situation or have to delay travel out of, or into, the country.

## **RECOMMENDATIONS**

In support of a fair and administrable tax system, the AICPA offers the following recommendations for your consideration:

### **1. Provide Automatic Extension of Notices and Collections Until 90 Days from the Shutdown Ending Date, Stop Assessing Penalties and Interest, and Cease Sending Automated Notices**

IRS should provide an automatic extension of notices and collection action, as well as a suspension of the expiration of the statute of limitations during the shutdown, until 90 days after the shutdown ends. The IRS should immediately stop assessing penalties and interest and cease sending automated notices to taxpayers, such as asset seizure warnings, notice of intent to levy, and collections notices. If the IRS does not have the staff to respond to communications and critical inquiries and place holds on actions, the agency should not penalize or continue to threaten action when the taxpayer is attempting to address the issues.

Once the shutdown ends, it may take months for the IRS to work through and resolve its backlog of taxpayer situations. Therefore, 90 days is a reasonable amount of time for taxpayers to respond to and resolve issues regarding notices and collections.

### **2. Maintain All Online Systems and Accounts Operating Effectively**

It is crucial that the IRS immediately and continually have all of its online systems and accounts accessible to taxpayers and tax practitioners. All EFTPS, e-services, and CAF systems must operate effectively to ensure tax payments and filings are processed timely and taxpayers and tax practitioners have access to their needed tax information to file accurate and timely tax returns.

### **3. Provide Full Assistance to Taxpayers and Tax Practitioners**

The IRS needs full staffing during the filing season. A smooth filing season is even more important this year as taxpayers deal with TCJA changes as well as new and reformatted individual income tax forms. In particular, IRS taxpayer assistance, TAS, and PPS need full staffing during the filing season to meet the demands of all the questions and issues that taxpayers will face this filing season.

### **4. Retain More IRS Chief Counsel Attorneys for TCJA Guidance**

During a period of sweeping tax law changes, Congress should ensure that Treasury and the IRS have the ability to provide detailed guidance to taxpayers. The January 15, 2019 filing season contingency plan only excepts 56 Chief Counsel attorneys to work on the TCJA guidance that is separately funded. More attorneys are likely needed to work on the TCJA guidance and related tax forms.

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The AICPA welcomes an opportunity to provide Treasury and the IRS input in their further consideration and prioritization of issues, services, and functions that taxpayers and tax practitioners need during the filing season. If you have any questions, please contact me at (408) 924-3508 or [Annette.Nellen@sjsu.edu](mailto:Annette.Nellen@sjsu.edu); Melissa Labant, AICPA Director – Tax Policy & Advocacy, at (202) 434-9234 or [Melissa.Labant@aicpa-cima.com](mailto:Melissa.Labant@aicpa-cima.com); or Lakecia Foster, AICPA Director of Congressional & Political Affairs, at (202) 434-9208, or [Lakecia.Foster@aicpa-cima.com](mailto:Lakecia.Foster@aicpa-cima.com).

Sincerely,



Annette Nellen, CPA, CGMA, Esq.  
Chair, AICPA Tax Executive Committee

cc: Members of the House Committee on Ways and Means  
Members of the Senate Committee on Finance  
The Honorable David J. Kautter, Assistant Secretary for Tax Policy, Department of the Treasury