AICPA

July 2, 2020

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
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: Tax Administrative and Penalty Relief Needed

Dear Assistant Secretary Kautter and Commissioner Rettig:

The American Institute of CPAs (AICPA) recognizes and appreciates the efforts the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) has made to provide filing and payment relief to taxpayers affected by the Coronavirus Disease 2019 pandemic (commonly known as "Coronavirus"). However, as we approach the July 15 filing and payment deadline, many taxpayers and tax preparers continue to struggle to calculate and pay tax payments and prepare and file tax returns. Further tax administrative and penalty relief is needed.

Specifically, we urge the IRS to act immediately to automatically waive failure to file and failure to pay penalties to the millions of taxpayers affected and working through the challenges created by the Coronavirus. Additionally, the IRS should set up an expedited process to help taxpayers establish or revise an installment agreement, based on current financial circumstances, to comply with their tax obligations. Finally, the IRS should delay collections activities *at least* 90 days after July 15, 2020.

BACKGROUND

Penalties

Under Internal Revenue Code (IRC) section 6651(a)(1),[1] a taxpayer who fails to file a return on or before its due date (including extensions) is subject to a penalty of five percent of the tax due (minus any credit the taxpayer is entitled to receive and payments made by the due date) for each month or partial month the return is late, up to a maximum of 25 percent.

Section 6651(a)(2) imposes a failure to pay penalty on taxpayers who fail to pay an amount shown as tax on his or her return. The penalty accrues at a rate of 0.5 percent per month on the unpaid balance for as long as the balance due remains unpaid, up to a maximum of 25 percent of the

[1] 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.

amount due.[2] When both the failure to file and failure to pay penalties[3] are imposed for the same month, the amount of the failure to pay penalty reduces the amount of the failure to file penalty by 0.5 percent for each month.[4]

To avoid the failure to file and the failure to pay penalties, taxpayers have the burden of proving the failure is due to reasonable cause and not willful neglect.[5] To establish reasonable cause, taxpayers must show that they exercised ordinary business care and prudence and were still unable to file their tax return or pay the amount shown on their tax return. Courts will consider "all the facts and circumstances of the taxpayer's financial situation" to determine whether taxpayers exercised ordinary business care and prudence. In addition, "consideration will be given to the nature of the tax which the taxpayer has failed to pay."[6]

Installment Agreements

For taxpayers that are unable to pay the full amount of tax due in one payment, section 6159 authorizes the IRS to enter into an agreement with a taxpayer to pay any tax due in installments to facilitate full or partial collection of the tax. Collectively, these agreements are known as installment agreements.[7]

Collection

If taxpayers do not pay their tax obligation in full at the time it is due, they generally will receive a series of escalating automated notices reminding them of the amount owed, including 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, through for example an installment agreement or offer in compromise, the IRS may file a Federal tax lien against the taxpayer, serve a notice of levy to the taxpayer, and offset a refund to which the taxpayer is entitled.

[2] Under section 6651(h) if the taxpayer timely files the return (including extensions) but an installment agreement is in place, the penalty will continue accruing at the lower rate of 0.25 percent per month rather than 0.5 percent per month of the tax shown.
[3] Failure to file and failure to pay penalties apply to income, estate, gift, employment and self-employment, and certain excise tax returns.
[4] Section 6651(c)(1). When both the failure to file and failure to pay penalties are accruing simultaneously, the failure to file will max out at 22.5 percent and the failure to pay will max out at 2.5 percent, thereby abiding by the 25 percent limitation.
[5] Treas. Reg. § 301.6651-1(c)(1). Even when taxpayers establish undue hardship, the regulations require them to prove reasonable cause.
[6] Treas. Reg. § 301.6651-1(c)(2).
[7] Internal Revenue Manual 5.14, Installment Agreements (Jan. 7, 2016).

Due to the Coronavirus, to help alleviate the filing and financial burdens created by taxpayer obligations, the IRS issued Notice 2020-23 providing payment and filing relief, until July 15, 2020, to filings and payment obligations that are due between April 1, 2020 and July 15, 2020. Furthermore, under its "People First Initiative," the IRS suspended required payments on installment agreements through July 15 and halted certain collection activities, including new automatic liens, systemic liens and systemic levies through July 15.

PENALTY RELIEF

The AICPA recommends the IRS automatically waive all penalties under section 6651(a)(1) (failure to file penalty) and section 6651(a)(2) (failure to pay penalty) for the 2019 tax year through the extended filing deadline. Furthermore, the IRS should reassess the impact of the Coronavirus during 2021 and determine the appropriateness of offering similar penalty relief for the 2020 tax year.

The rapid emergence of the Coronavirus pandemic has generated never-before uncertainty and difficulties. As a result, taxpayers are facing the largest level of unemployment ever seen in the United States since the Great Depression[8] making it difficult for many to afford food or pay their mortgages, much less meet their tax obligations. Other taxpayers struggling with fighting the Coronavirus or struggling with effects of quarantine may not have the time, may not have access to data, or are simply overwhelmed and confused to timely file.

In these circumstances, all taxpayers impacted by the Coronavirus have a basis for reasonable cause to avoid the failure to file, failure to pay and underestimated tax penalties. However, burdensome paperwork is required of the already stressed taxpayers to request abatement of penalties under these rules. It is also an administrative burden for the IRS to timely approve the many reasonable cause waiver of penalty requests. To mitigate the burden on taxpayers and the IRS, the IRS should exercise its authority under reasonable cause and its general authority to allocate enforcement resources and determine compliance priorities to waive these penalties for all taxpayers. Given the extraordinary circumstances, automatic waiver of penalties for the 2019 tax year, and possibly the 2020 tax year, is appropriate.

INSTALLMENT AGREEMENTS

We recommend the IRS establish an expedited process to approve new installment agreements or modifications of existing installment agreements, based on realistic and affordable payment arrangements, for taxpayers impacted by the Coronavirus.

Installment agreements are offered as a collection alternative as they are generally mutually beneficial to taxpayers and the IRS. Often installment agreements are granted based on a streamlined installment agreement method which does not consider financial analysis or living

[8] Rkesh Kochhar, Pew Research Center "*Unemployment rose higher in three months of COVID-19 than it did in two years of the Great Recession*," June 11, 2020. In April of 2020 unemployment rates reached 14.4%.

expenses.[9] However, as more taxpayers feel the strain of the Coronavirus, a larger percentage of taxpayers with an installment agreement will either default or make their payments at the expense of necessary living expenses. Meanwhile, other taxpayers will need immediate relief through new installment agreements.

An installment agreement, based on realistic payments that consider the hardships endured by taxpayers, will provide peace of mind to the millions of taxpayers making a good faith attempt at complying with their tax obligations.

DELAY IN IRS COLLECTIONS

The AICPA recommends that the IRS continue to halt its automatic collections activities of liens and levies by at least an additional 90 days after July 15. At that time, the IRS should reassess the appropriateness of re-establishing any collection activities.

Further, after July 15, 2020, taxpayers will start to receive automatic collection notices for amounts owed, new automatic liens, systemic liens and systemic levies. However, Coronavirus will continue to disrupt the lives of taxpayers well past July 15 and many will continue to suffer from financial instability.

Furthermore, many taxpayers will have responded to notices through paper correspondence. Currently, the IRS has a backlog of letters that is unmanageable. The IRS has rented tractor-trailers and separate storage containers to store the mail received. It is estimated that it will take the IRS about one and one-half years to sort through the backlog of mail.[10] In that timeframe, taxpayers could inappropriately receive further collection notices or threatening liens or levies. The IRS must continue to provide taxpayers relief from collections activities.

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On July 15, business will not continue as normal for either taxpayers or the IRS given the tremendous amount of change, hardship and uncertainty taxpayers and tax preparers continue to face. It is both necessary and appropriate to provide further compliance relief to those taxpayers that are truly impacted by the Coronavirus and do not have the wherewithal to continue to voluntarily meet their tax obligations.

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 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

[9] Nina Olson, National Taxpayer Advocate, "*Installment Agreements (IAs): TAS Study Finds Taxpayers Enter IAs They Cannot Afford*," September 13, 2017.
[10] Nina Olson speaking with Brian Naylor with NPR, "*With Tax Deadline Looming, IRS Faces Backlog As It Transitions Out Of COVID-19 Crisis*," June 16, 2020.

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 Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9235 or Melanie.Lauridsen@aicpa-cima.com; or me at (612) 397-3071 or Chris.Hesse@CLAconnect.com.

Sincerely,

Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee