



August 4, 2022

The Honorable Ron Wyden  
Chairman  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Chairman  
U.S. House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Kevin Brady  
Ranking Member  
U.S. House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

**Re: Tax Provisions in Senate Reconciliation Legislation Released on July 27, 2022**

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) provides comments regarding important profession and tax policy issues that are in the [Senate reconciliation legislation released on July 27, 2022](#). These comments are in addition to our letters previously submitted to Congress on October 1, 2021<sup>1</sup>, November 10, 2021<sup>2</sup>, December 14, 2021<sup>3</sup>, and January 28, 2022<sup>4</sup>, regarding important profession and tax policy issues in earlier versions of reconciliation considered over the past year.

The AICPA is a long-time advocate for a tax system based on principles of good tax policy.<sup>5</sup> We look forward to working with Congress as the reconciliation package moves forward to ensure that the proposed changes are administrable, equitable, and meet the needs of both taxpayers and tax practitioners. In this regard, we highlight some of the key issues we have identified for your consideration. We note that the items listed are not in any priority order, and we may have additional comments and insights as we further analyze the reconciliation legislation. In addition, as Congress moves forward with reconciliation legislation, it is important that special care is given to transition rules and to provide sufficient time and flexibility to implement the transition rules and offer penalty relief as needed.

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<sup>1</sup> See AICPA letter, "[Tax Provisions in House Reconciliation Legislation or Being Considered](#)," October 1, 2021.

<sup>2</sup> See AICPA letter, "[Tax Provisions in House Manager's Amendment to Rules Committee Reconciliation Legislation or Being Considered](#)," November 10, 2021.

<sup>3</sup> See AICPA letter, "[Tax Provisions in Senate Finance Committee Reconciliation Legislation Released on December 11, 2021](#)," December 14, 2021.

<sup>4</sup> See AICPA letter, "[Additional Comments Regarding Effective Dates in Build Back Better \(BBB\) Act](#)," January 28, 2022.

<sup>5</sup> See [AICPA Principles of Good Tax Policy \(12 principles providing objective framework to evaluate policy proposals\)](#).

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Specifically, the AICPA provides comments on the following issues:

1. Sec. 10101. Corporate Alternative Minimum Tax.
2. Sec. 10201. Modification of Rules for Partnership Interests Held in Connection with the Performance of Services.
3. Sec. 10301. Enhancement of Internal Revenue Service Resources.

### **1. Sec. 10101. Corporate Alternative Minimum Tax.**

The AICPA has concerns<sup>6</sup> with the *Corporate Alternative Minimum Tax* proposal contained in Section 10101. In particular, the minimum tax violates numerous elements of good tax policy and there may be unintended negative consequences that should be carefully considered. For example, imposing tax according to financial statement income takes the definition of taxable income out of Congress's hands and puts it into the hands of industry regulators and others. There are many key conceptual differences between financial income and taxable income, including the concept of materiality. Public policy taxation goals should not have a role in influencing accounting standards or the resulting financial reporting. Independence and objectivity of accounting standards are the backbone of our capital markets system.

There are other considerations as well. For example, section<sup>7</sup> 56A(c) introduces "General Adjustments" to "applicable financial statements," which adds a level of complexity and requires clarification. In addition, the proposed *Corporate Alternative Minimum Tax* appears to fundamentally alter the foreign tax credit system that has been in place since 1962.

The proposed *Corporate Alternative Minimum Tax* will substantially increase the complexity of the Internal Revenue Code (IRC) and presents a fundamental shift in taxation of United States (U.S.) entities and could result in uncertain results to taxpayers and a costly compliance requirement.

If Congress decides to enact the *Corporate Alternative Minimum Tax*, corporations and the IRS would need substantially more time than for the proposed effective date of taxable years beginning after December 31, 2022, to understand and implement the new law changes. There will be considerable administrative costs and compliance burdens that would be imposed on corporations and the government alike. For example, this tax will greatly complicate recordkeeping requirements and taxpayers will need to evaluate whether they are even subject to the tax and what adjustments are potentially applicable. Many of the adjustments could in turn be extremely complex. In addition, taxpayers will require significant lead time to help develop systems to track

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<sup>6</sup> See AICPA letter, "[Corporate Profits Minimum Tax in Reconciliation Legislation Being Considered](#)," June 21, 2022, and AICPA letter, "[Corporate Profits Minimum Tax in Reconciliation Language being Considered](#)," October 28, 2021.

<sup>7</sup> All references to "section" (unless referencing the Senate reconciliation legislation) are to the Internal Revenue Code of 1986, as amended, unless otherwise specified.

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their analysis. The IRS will also need additional time to issue guidance surrounding the new law to enable taxpayers to successfully comply. If the tax is enacted, the AICPA recommends that the effective date is delayed until after the later of taxable years beginning after December 31, 2023 or the date Treasury issues proposed regulations to provide taxpayers with the needed time to fully analyze and comply.

## **2. Sec. 10201. Modification of Rules for Partnership Interests Held in Connection with the Performance of Services.**

The AICPA takes no position on the adoption of Sec. 10201. Modification of Rules for Partnership Interests Held in Connection with the Performance of Services (“carried interest”). However, should Congress move forward with the carried interest changes, we suggest several technical clarifications or modifications.

First, the AICPA suggests that clarification or additional guidance be provided with the proposed legislation as to the determination of the holding period contained within the holding period exception with respect to an applicable partnership interest (API). The new proposed section 1061(b)(2)(A) states the following:

“(2) HOLDING PERIOD EXCEPTION.—

“(A) IN GENERAL.—Net applicable partnership gain shall be determined without regard to any amount which is realized after the date that is 5 years after the latest of:

“(i) The date on which the taxpayer acquired **substantially all** of the applicable partnership interest with respect to which the amount is realized.

“(ii) The date on which the partnership in which such applicable partnership interest is held acquired **substantially all** of the assets held by such partnership.

“(iii) If the partnership described in clause (i) owns, directly or indirectly, interests in one or more other partnerships, the dates determined by applying rules similar to the rules in clauses (i) and (ii) in the case of each such other partnership.” (*emphasis added*)

The determination of when a partner has acquired “substantially all” of its API or the partnership has acquired “substantially all” of its assets can be a subjective determination and difficult to implement. Additionally, partnerships used in certain industries (e.g., private equity) can be continuously acquiring assets, including interests in other partnerships, corporations, etc. Therefore, it is possible that a partner or partnership may not be able to meet the requirements that would begin the 5-year window for the holding period exception.

If the purpose of the proposed change to Section 1061 is to recharacterize gains with respect to APIs held or partnership assets held 5 years or less, then the AICPA recommends that the “substantially all” requirement be replaced with an exclusion of gains realized with respect to one or more APIs from net applicable partnership gain (as defined in section 1061(b)(1)) to the extent

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that the API has been held for more than 5 years and the assets attributable to the gain realized have been held for more than 5 years. Similar changes should also be made with respect to tiered partnerships.

The AICPA also suggests that the special rule in proposed section 1061(b)(4) (which is the same as the current section 1061(b)) be changed from “To the extent provided by the Secretary...” to “The Secretary shall issuance regulations or other guidance...” (or similar language). The Treasury and IRS have reserved in the existing regulations to section 1061(b) from providing such guidance, which is needed for entities that do not hold assets for portfolio investment on behalf of third-party investors (e.g., management companies, family offices, etc.).

Finally, the AICPA also suggests clarifications to the proposed legislation on carried interest regarding trusts, estates, and gifts.<sup>8</sup> The proposed legislation regarding carried interest would broaden section 1061(d) to any transfers of an applicable partnership interest (API.) The exact language is as follows:

‘(d) TRANSFER OF APPLICABLE PARTNERSHIP INTEREST.—If a taxpayer transfers any applicable partnership interest, gain shall be recognized notwithstanding any other provision of this subtitle.’

Specifically, AICPA recommends that the proposed legislation be modified and clarified to provide that application of section 1061(d) should remain limited to taxable transfers, and that nonrecognition continue for sales and gifts to grantor trusts, contributions, gifts, death and otherwise nontaxable transfers of an API. In this respect, a nontaxable transfer also includes the deemed transfer of assets pursuant to a trust’s conversion from a grantor trust to a non-grantor trust (due to the death of the grantor or other event). Additionally, the proposed expansion of section 1061(d) to cover nonrecognition transfers of APIs could affect planning involved in a pre-sale restructuring of the partnership. The AICPA recommends that, at a minimum, a transfer of an API that retains its character as an API after such transfer should not result in gain to the transferor if the transfer is otherwise a nonrecognition event.

### **3. Sec. 10301. Enhancement of Internal Revenue Service Resources.**

Section 10301 proposes providing the Internal Revenue Service (IRS) with the following funding through September 30, 2031:

- \$3,181,500,000 for taxpayer services,

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<sup>8</sup> AICPA recommends that the proposed legislation be modified and clarified similar to the [AICPA recommended approach on Nov. 23, 2020](#), on the prior proposed regulations, and which IRS adopted in current final regulations for section 1061(d)) that only taxable transfers be covered.

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- \$45,637,400,000 for enforcement,
- \$25,326,400,000 for operations support, and
- \$4,750,700,000 for business systems modernization.

AICPA has concerns regarding the sufficiency of the funds allocated for taxpayer services. We recently requested that Congress fund the Internal Revenue Service (IRS) at necessary levels to allow it to handle all the duties required of it by Congress, including properly administering and enforcing our nation's tax laws as well as providing needed assistance to taxpayers and their advisers in a timely and professional manner.<sup>9</sup> The AICPA has always publicly advocated for funding that supports an effective and efficient tax administrative system, and we are pleased to see that Congress may be poised to make a significant investment in critical IRS divisions. We understand that enforcement is an important aspect of the responsibilities of the IRS, however, enforcement actions must be in balance with the services the IRS provides to taxpayers. Given the historic low levels of IRS taxpayer services,<sup>10</sup> we are concerned about a possible imbalance between the funding for taxpayer services and enforcement.

Indeed, National Taxpayer Advocate Erin Collins recently released her midyear report to Congress and expressed concerns with the backlog of unprocessed paper tax returns, correspondence processing delays, and telephone challenges. "Unfortunately, at this point the backlog is still crushing the IRS, its employees, and most importantly, taxpayers" according to Collins.<sup>11</sup>

We urge Congress to commit, in a bipartisan manner, to determine the appropriate level of service necessary for the IRS and provide adequate resources for the agency to meet those goals – either as part of a reconciliation package or in a separate vehicle.

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The AICPA is the world's largest member association representing the accounting 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.

We welcome the opportunity to discuss these comments on the reconciliation legislation or to answer any questions that you may have. If you have any questions, please contact; Edward Karl, AICPA Vice President - Tax Policy and Advocacy, at (202) 355-4892, or [edward.karl@aicpa-](mailto:edward.karl@aicpa-)

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<sup>9</sup> See AICPA letter, "[IRS FY 2023 Appropriations](#)," May 25, 2022.

<sup>10</sup> Michelle Singletary, The Washington Post, "[The IRS is a hot mess: Millions of tax returns haven't been processed, and calls are going unanswered, including mine](#)," July 2, 2021.

<sup>11</sup> "[National Taxpayer Advocate, Objectives Report to Congress, Fiscal Year 2023](#)," June 22, 2023.

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[cima.com](http://cima.com); Lauren Pfingstag, Director - AICPA Congressional or Political Affairs, at (407) 257-0607, or [lauren.pfingstag@aicpa-cima.com](mailto:lauren.pfingstag@aicpa-cima.com); or me at (601) 326-7119 or [JanLewis@HaddoxReid.com](mailto:JanLewis@HaddoxReid.com).

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Lewis".

Jan Lewis, CPA  
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance  
Members of the House Committee on Ways and Means  
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation  
The Honorable Janet Yellen, Secretary of the Treasury  
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury  
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service  
Mr. William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service