



WRITTEN STATEMENT

OF

THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

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HEARING OF

THE UNITED STATES SENATE
COMMITTEE ON FINANCE

ON

THE 2017 TAX FILING SEASON: INTERNAL REVENUE SERVICE
OPERATIONS AND THE TAXPAYER EXPERIENCE

The American Institute of CPAs (AICPA)¹ applauds the leadership taken by the Committee to address ways to improve the tax filing season, review the complexity faced by taxpayers, and examine how the Internal Revenue Service (IRS or "Service") can better serve the public. While tax season always causes some level of anxiety for taxpayers, in recent years, the repeated delays in information returns, lack of guidance on emerging issues, and the IRS's inability to timely respond to written communications have added to the growing trepidation America's taxpayers have towards the annual filing season.

We hear a resounding echo of confusion from tax practitioners as our members advise clients and continue to work on filing 2016 returns. The issuance of delayed guidance has been a significant factor since it increases compliance uncertainty. For example, on March 30, 2017, the IRS released partial guidance for small business use of the research credit per law changes made in 2015.² This guidance affects the 2016 returns of individuals and business entities, some of which were due by March 15, 2017. In addition, the IRS issued Notice 2017-09 on January 4, 2017 to provide guidance on 2015 law changes relevant to information returns starting from 2016, many of which were due by January 31, 2017. As a result, many taxpayers are in a state of confusion regarding not only how to comply with this season's new rules but also how to proceed with tax planning.

In the interest of good tax policy and effective tax administration,³ we are submitting feedback and recommendations on IRS taxpayer services, information reporting and Forms 1099, Individual Taxpayer Identification Numbers (ITIN), due diligence requirements, deadlines related to disasters, guidance needed on emerging issues, and other tax filing season concerns, where legislative changes can help improve future filing seasons.

1. IRS Taxpayer Services

As we approach the 20th anniversary of the Report of the National Commission on Restructuring the IRS⁴ ("Restructuring Commission"), we recommend that any effort to modernize the IRS and its technology infrastructure build on the foundation established by the Restructuring Commission. The current degradation of the IRS taxpayer services is unacceptable. The percentage of calls from taxpayers the IRS answered between 2004 and 2016 dropped from 87% to 53%. Comparing 2004 to 2016, the number of calls the IRS

¹ See AICPA Tax webpage at: <http://www.aicpa.org/InterestAreas/Tax/>.

² [Notice 2017-23](#) (3/30/17) and [IR-2017-70](#) (3/30/17).

³ AICPA, *Guiding Principles for Good Tax Policy: A Framework for Evaluating Tax Proposals*, 2017; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/tax-policy-concept-statement-no-1-global.pdf>.

⁴ Report of the National Commission on Restructuring the IRS, "A Vision for a New IRS," June 25, 1997; <http://www.house.gov/natcommirs/report1.pdf>.

received from taxpayers increased from 71 million to 104 million, yet the number of calls answered by telephone assistors declined from 36 million to 26 million.⁵

As tax professionals, we represent one of the IRS's most significant stakeholder groups.⁶ As such, we are both poised and committed to being part of the solution for improving IRS taxpayer services. We recently submitted a letter⁷ to Senate Finance Committee and House Ways and Means Committee members in collaboration with other professional organizations. Our recommendations include modernizing IRS business practices and technology, re-establishing the annual joint hearing review, and enabling the IRS to utilize the full range of available authorities to hire and compensate qualified and experienced professionals from the private sector to meet its mission. The legislative and executive branches should work together to determine the appropriate level of service and compliance they want the IRS accountable for and then dedicate appropriate resources for the Service to meet those goals. We encourage the IRS to continue its customer satisfaction surveys as a success measure for the agency and also use its traditional account services to provide face-to-face interaction with those taxpayers who cannot afford or do not use online account features.

Additionally, we recommend the IRS create a new dedicated practitioner services unit to rationalize, enhance, and centrally manage the many current, disparate practitioner-impacting programs, processes, and tools. As part of this new practitioner service unit, the IRS should provide practitioners with an online tax professional account with access to all of their clients' information. The IRS should offer robust practitioner priority hotlines with higher-skilled employees that have the experience and training to address complex issues. Furthermore, the IRS should assign customer service representatives (a single point of contact) to geographic areas in order to address challenging issues that practitioners could not resolve through a priority hotline.

2. Information Reporting and Forms 1099

Taxpayers and the tax practitioner community are substantially burdened by the growing volume of corrected and delayed information returns. Taxpayers receiving corrected Forms 1099 are obligated to file amended tax returns in order to report the corrected amounts. This process compresses the tax filing season and causes time-consuming and expensive efforts

⁵ National Taxpayer Advocate, "Annual Report to Congress 2016, Executive Summary: Preface, Special Focus and Highlights," 2016, page 16; https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_ExecSummary.pdf.

⁶ Sixty percent of all e-filed returns in 2016 were prepared by a tax professional, according to the Filing Season Statistic for Week Ending Dec.2, 2016; <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-december-second-2016>.

⁷ AICPA comment letter, "Ensuring a Modern-Functioning IRS for the 21st Century," dated April 3, 2017; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/IRS-Service-Improvement-Practitioner-Report.pdf>.

for corrections that often result in insignificant differences. Congress should not require taxpayers that receive corrected information returns to file amended tax returns for relatively minor dollar amounts. A simplified safe harbor would not only reduce burdens on taxpayers and practitioners to repeatedly correct returns, but also reduce the expenditure of IRS resources in processing such returns.

a. *De Minimis* Error Safe Harbor for Taxpayers

Under Notice 2017-09, if an inadvertent error is made by the payor (or “issuer”) in the preparation of information returns, such that the amount of the error does not exceed \$100 or an error in reporting taxes withheld does not exceed \$25, then the penalties⁸ authorized under these sections are waived. However, if the payee (recipient of the incorrect information return) elects a corrected statement but one is not issued, the penalty is not automatically waived.

The election process outlined in the statute and notice will create compliance burdens for information return issuers, some of which are large brokerage firms with thousands of individual recipients. Issuers will need to track whether elections were made to waive the *de minimis* error safe harbor. Small businesses that issue Forms 1099-MISC will have the administrative burden of using their limited resources to comply with these new rules and track their information return recipients' elections.

Under the current rules, there is no *de minimis* safe harbor for recipient taxpayers. If the issuer decides to issue a corrected Form 1099 for an immaterial amount (even if not required), the taxpayer must file an amended tax return. Throughout this filing season, our tax practitioner members continue to receive corrected Forms 1099, including those under the *de minimis* error safe harbor threshold. As a result, we have seen no easing of the burdens on taxpayers and their return preparers.

In the interest of effective tax administration, the AICPA proposes a simplified approach for the *de minimis* error safe harbor rules under sections 6721 and 6722,⁹ as follows:

1. If a recipient of information returns notifies the issuer of an error, the issuer has thirty days in which to provide a corrected document to the recipient. If the issuer fails to provide a corrected document, it is subject to the penalties (unless the IRS determines there is other justification for a penalty waiver).¹⁰

⁸ Under Internal Revenue Code (IRC) sections 6721 and 6722.

⁹ All references in this letter to the Internal Revenue Code are to the Internal Revenue Code of 1986, as amended.

¹⁰ Issuers could still file corrected information returns addressing *de minimis* errors.

2. Recipients of incorrect information returns have 18 months from the original issuance date to request corrected information returns from the issuer.¹¹ This timeline protects issuers from incurring penalties many years past their original year of error.
3. Recipients of corrected information returns are allowed a *de minimis* safe harbor such that small changes do not require the filing of amended Forms 1040, 1041, 1065, 1120-S or 1120. In such cases, the IRS would not issue a matching notice (such as, a CP2000). The section 6721 and 6722 *de minimis* error dollar amount guidelines are used for these purposes. Thus, if corrected amounts on any information return do not change Adjusted Gross Income (AGI) by more than \$100 or change tax liability by more than \$25, the recipient of the corrected information return would not incur penalties for failure to file an amended tax return.
4. If a corrected information return changes AGI by more than \$100, but less than \$200, the recipient can “true-up” the error on the next year’s tax return.
5. Allow reporting entities (including employers, partnerships, corporations, estates and trusts) to “roll over” small information return errors, contained on Forms 1099 and W-2 and Schedules K-1, in the following year rather than file amended or corrected forms if the corrected amount for a recipient exceeds \$100 but is no more than \$200 in income.

For example, if ordinary dividends of \$200 are reported on a client’s tax return for 2016, the client should not file an amended tax return if the client receives a corrected Form 1099 showing \$210 of dividends. Offering this safe harbor to taxpayers will not only save individuals from costly tax preparation expenses, but will improve efficiency for both tax preparers and the IRS.

b. Delayed/Late Forms 1099

An important concern to both taxpayers and tax preparers is the growing number of corrected information returns. Tax filing seasons have become increasingly challenging for 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*, by brokerage firms.

¹¹ Section 6722(c)(2)(B) would need to include this time limit.

Generally, issuers must furnish a copy of Form 1099-DIV to taxpayers by January 31, 2017.¹² Many brokerage firms, however, are sending corrected Forms 1099-DIV after the January 31 date with relatively small changes. This late issuance occurs because brokerage firms can amend a Form 1099 at any time.

While we recognize that the brokerage firms face challenges to meet reporting requirements in a timely manner after close of the calendar year, corrected forms create anxiety, confusion, and an increase in tax preparation fees. Taxpayers are willing to file an amended return if necessary, but strongly prefer to file only once. As a result, many taxpayers now tend to wait until they have received their annually-anticipated late corrected Forms 1099 before bringing their tax records to their CPA. Although taxpayers can file an amended Form 1040 after April 15,¹³ clients want to ensure they do not owe any late payment penalty or obtain their refund as soon as possible, thus preferring to complete amended returns as soon as possible. Tax practitioners are suffering a more compressed tax filing season as a result of this increasingly shortened timeline.

We believe our recommendations listed above regarding *de minimis* errors will also address this common problem of delayed and amended Forms 1099 with *de minimis* changes.

3. Individual Taxpayer Identification Numbers (ITINs)

It is critical for the IRS to effectively administer the ITIN program, including ITIN renewals, without disrupting the tax filings of the individual taxpayers who want to remain compliant with their annual filing obligations. We have submitted comments to the Service¹⁴ on the provisions amended by P.L. 114-113, also known as the Protecting Americans from Tax Hikes Act of 2015 (PATH Act),¹⁵ and their implementation by the IRS as outlined in Notice 2016-48.

The PATH Act changes to the ITIN processes require technical corrections for effective tax administration to occur. We suggest that Congress reintroduce and enact the Tax Technical

¹² IRC section 6045(b).

¹³ See IR-2016-167: The filing deadline to submit 2016 tax returns is Tuesday, April 18, 2017, rather than the traditional April 15 date; <https://www.irs.gov/uac/2017-tax-filing-season-begins-jan-23-for-nations-taxpayers-with-tax-returns-due-april-18>.

¹⁴ AICPA Comment Letter, "Notice 2016-48, Implementation of PATH Act ITIN Provisions," dated September 27, 2016; <https://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comment-Letter-Notice-2016-48-Implementation-of-PATH-Act-ITIN-Provisions-9-27-16.pdf>.

¹⁵ P.L. 114-113 (12/18/15), "Protecting Americans from Tax Hikes Act of 2015," amending sections 6109(i) and 6213(g) regarding ITINs; <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.

Correction Act of 2016¹⁶ previously introduced on December 6, 2016 in the 114th Congress. Specifically, we support the provision in the bill regarding procedures used by overseas taxpayers to obtain or renew their ITIN. This provision would simplify the application and renewal process for millions of overseas taxpayers who are affected by the changes to the procedures. Under current law, overseas taxpayers can no longer use community-based CAAs to process their ITIN applications. This rule imposes an unduly harsh burden on those taxpayers who are attempting to fulfill their U.S. tax filing obligations. The proposed technical corrections in the Tax Technical Correction Act of 2016 would allow ITIN holders living abroad to use CAAs.

4. Due Diligence Requirements

The PATH Act added the Child Tax Credit (CTC) and the American Opportunity Tax Credit (AOTC) to the due diligence requirements of paid preparers that claim these refundable credits. Prior to this new requirement for paid preparers to complete Form 8867, *Paid Preparer's Due Diligence Checklist*, many tax preparers were already subject to due diligence rules with penalty consequences. Congress likely expanded the section 6695(g) penalty to these additional refundable credits due to taxpayer errors in claiming them.

However, this additional checklist is an unnecessary burden to professional preparers who are already subject to multiple levels of due diligence requirements. These existing requirements include the section 6694 preparer penalty regulations, the U.S. Department of the Treasury's ("Treasury") Circular 230 rules, professional association ethical standards, and state licensing board regulations.

The AICPA recommends that Congress modify section 6695(g) by adding an additional sentence as follows:

“The Secretary must consider simplified approaches that recognize that taxpayers are responsible for the accuracy of their return and that certain tax return preparers are already subject to additional due diligence requirements.”

Most professional preparers properly adhere to the requirements listed in the Form 8867 checklist (even without such a specific checklist) and we question if the additional burden to complete a multi-page checklist is a true deterrent for those practitioners who are failing to fulfill their due diligence requirements. We urge Congress and the IRS to consider

¹⁶ S. 3506, “Tax Technical Corrections Act of 2016,” <https://www.congress.gov/114/bills/s3506/BILLS-114s3506is.pdf>. Additionally, the AICPA supports technical corrections included in the bill relating to partnership audit rules, which are included in the Bipartisan Budget Act of 2015, to mitigate negative impacts on the IRS and taxpayers. These corrections would improve the IRS's ability to fairly and equitably administer the new partnership audit regime and reduce the administrative burdens on the IRS and taxpayers.

whether the information obtained from Form 8867 provides value to warrant the added administrative burdens to both professional tax preparers and the IRS.

5. IRS Deadlines Related to Disasters

Similar to IRS's authority to postpone certain deadlines in the event of a presidentially-declared disaster, Congress should extend that limited authority to state-declared disasters and states of emergency. Currently, the IRS's authority to grant deadline extensions, outlined in section 7508A, is limited to taxpayers affected by federal-declared disasters. State governors will issue official disaster declarations promptly but often, presidential disaster declarations in those same regions are not declared for days, or sometimes weeks after the state declaration. This process delays the IRS's ability to provide federal tax relief to disaster victims. Individuals have the ability to request waivers of penalties on a case-by-case basis; however, this process causes the taxpayer, tax preparer, and the IRS to expend valuable time, effort, and resources which are already in shortage during times of a disaster. Granting the IRS specific authority to quickly postpone certain deadlines in response to state-declared disasters allows the IRS to offer victims the certainty they need as soon as possible.

This past year, multiple states along Southeastern U.S. were affected by Hurricane Matthew, including Florida, Georgia, North and South Carolina, and Virginia. From October 6 through 10, Matthew traveled north along the southeast coast. A federal state of emergency was declared for Florida on October 6 and later extended to include Georgia and South Carolina. Tax preparers and taxpayers living in the affected regions not only lost access to power and the internet, but lost tax documents and financial information due to flooding and destruction of both their homes and businesses. On October 13, 2016, the IRS issued IR-2016-132 offering federal tax relief to regions of North Carolina. The relief arrived two days before the major October 15 individual extended tax filing deadline – which caused tax practitioners unnecessary stress and burden for the days leading up to the issuance of the relief. Three days *after* the extended filing deadline, on October 18, the IRS issued relief for Florida and Georgia – which was, unfortunately, too late to make a substantial difference.

More recently, on March 13, 2017, Winter Storm Stella hit the Northeast and Mid-Atlantic U.S. covering many states in multiple feet of snow two days before the March 15 business return due date. Before 2:00 pm (ET) on the first day of the storm, governors in New York and other states began issuing emergency declarations while the AICPA and state CPA societies along the northeast received calls from members needing federal filing relief from the IRS. Two days later, at approximately 4:30 pm (ET) on the March 15 filing due date, the IRS finally issued IR-2016-61 offering business taxpayers affected by Winter Storm Stella additional time to file. Receiving federal extensions are helpful, but the sooner the IRS can grant this relief, the greater the beneficial impact on victims.

The AICPA has long supported a set of permanent disaster relief tax provisions¹⁷ and we acknowledge both Congress's and the IRS's willingness to help disaster victims. To provide more timely assistance, however, we recommend that Congress allow the IRS to postpone certain deadlines in response to state-declared disasters or state of emergencies.

6. Guidance Needed on Emerging Issues

Online crowdfunding and the sharing economy are quickly expanding mediums through which individuals obtain funds or seek new sources of income. Individuals may understand the steps through which they can use these new crowdfunding and sharing economy opportunities to their advantage. However, many tax preparers and their clients do not have the guidance necessary to accurately comply with the complex, out-of-date, or complete lack of tax rules in these emerging areas.

Lawmakers and tax administrators must regularly review existing laws, against new changes in the ways of living and doing business, to determine whether tax rules and administration procedures need modification and modernization. We urge Congress and the IRS to develop simplified tax rules and related guidance in the emerging sharing economy and crowdfunding areas. Some of the areas in need of modernization include information reporting (such as to avoid reporting excluded income (such as a gift) as income), simplicity in reporting and tracking rental losses from year to year, and simplified approaches for recordkeeping for small businesses. Offering clarity on these issues will allow taxpayers to follow a fair and transparent set of guidelines while the IRS benefits from a more efficient voluntary tax system.

7. Other Tax Filing Season Concerns

a. Tax-Related Identity Theft

The AICPA supports efforts to combat identity theft and tax fraud.¹⁸ The growing amount of fraudulent tax refunds¹⁹ paid and the economic and emotional impact to

¹⁷ AICPA Comment Letter, "Request for Permanent Tax Provisions Related to Disaster Relief," dated November 22, 2013; <https://www.aicpa.org/Advocacy/Tax/Individuals/DownloadableDocuments/11-22-13 Permanent Tax Related Disaster Relief Provisions Comment Letter.pdf>.

¹⁸ See AICPA comment letter, "Tax Reform Discussion Draft on Tax Administration," dated January 16, 2014; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comments-on-Discussion-Draft-on-Tax-Administration.pdf> and AICPA comment letter, "Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud," dated September 15, 2015; <https://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2015-09-15-Prevent-ID-Theft-and-Tax-Refund-Fraud-Comment-Letter-FINAL.pdf>.

¹⁹ AICPA Comment letter, "Comments on the Identity Theft and Tax Fraud Prevention Act of 2013 and Recommendations on Efforts to Combat Identity Theft," dated June 27, 2013; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013_06_27_Comments_on_Identity_Theft

individual victims of identity theft are unacceptable. Therefore, we recommend a single point of contact for identity theft victims to streamline the process and help identify areas of duplication and causes for delays, and support a criminal penalty for misappropriating taxpayer identity.²⁰

We are concerned, however, about certain other measures intended to address identity theft. In recent years, the IRS and some state tax agencies have started requiring additional personal data, such as a driver's license number, for electronic filing. Taxpayers and their return preparers are reluctant to provide additional personal data to online tax software databases and state agencies as this process could increase identity theft risk. Therefore, the AICPA supports consideration of alternatives to reduce the need for submitting personal identification data in the tax compliance process beyond the personal data traditionally requested (TIN, address, employer, etc.). As a suggestion, we ask Congress to require the IRS to provide a report to the congressional tax committees on its operation of the current identity protection personal identification number (IP PIN) system. We believe this report would encourage and support the expansion of the PIN system, which is currently used on a limited basis, to help prevent identity theft.

b. IRS Private Debt Collection

Taxpayers have growing concerns about the actions of private collection agencies and their legal authority. Due to the proliferation of fraudulent tax return scams, we believe the use of private collection agencies will add security, authentication, verification, and complexity concerns to an already overburdened system. We urge Congress to repeal section 6306(c)(1) as it will likely harm taxpayers and further degrade the trust in our voluntary tax compliance system while increasing the costs of collections.

From 2006 to 2009, the IRS employed private debt collection agencies to assist in locating and contacting taxpayers, and requesting installment agreements for unpaid tax liabilities. However, in 2009, the IRS announced that it would not renew the private collection agencies' contracts because the Service's internal collection activities were more successful and cost-effective. Now that the private debt collection program is reestablished, taxpayers are concerned, or many are unaware, that these collectors do not recognize economic hardships nor do they offer taxpayers the same relief that the IRS is required to provide under statutory law.

[and Tax Fraud.pdf](http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.04.16_Testimony_on_Tax_Fraud_Tax_ID_Theft_and_Tax_Reform.pdf). See AICPA Testimony to U.S. Senate Committee on Finance hearing on, "Tax Fraud, Tax ID Theft and Tax Reform: Moving Forward with Solutions," April 16, 2013; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.04.16_Testimony_on_Tax_Fraud_Tax_ID_Theft_and_Tax_Reform.pdf.

²⁰ 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.

Additionally, the IRS does not have the ability to ensure consistent and fair treatment of taxpayers across multiple private collection agencies.

CONCLUDING REMARKS

The AICPA appreciates this opportunity to submit a statement for the record and we urge this Committee to consider our suggestions as Congress decides how to improve tax compliance and IRS taxpayer services. We look forward to working with the Committee as you continue to address the needs of tax preparers and taxpayers.

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state, local 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.