



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

August 28, 2012

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

RE: Need for IRS Resolution to Systemic IRS Incorrect Letters on Form 3520

Dear Commissioner Shulman:

The American Institute of CPAs (AICPA) has become aware of a widespread problem affecting numerous taxpayers across the country (including taxpayers in: California, Florida, Maryland, Massachusetts, New York, and Washington) as well as taxpayers in Canada who are receiving incorrect letters from the Internal Revenue Service (IRS) regarding the completion and filing of [Form 3520](#), *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, for 2010 and earlier years. The letters with erroneous conclusions cover several different issues as described in detail below. The letters are inconveniencing taxpayers and causing them to incur unnecessary professional fees when practitioners must respond to the IRS explaining why the IRS letters are incorrect and request an abatement of the penalties. We suggest that the IRS look into this matter and if it is determined that the letters are incorrect, the IRS should consider ceasing the issuance of such incorrect letters and evaluate the possibility of announcing that any such outstanding letters do not require a response.

In particular, we have heard numerous reports of incorrect IRS letters to taxpayers (redacted copies attached) regarding several different items reported on Form 3520, including the following:

1. With respect to Form 3520, Part II (U.S. Owner of a Foreign Trust), line 23, the letters instruct the taxpayer to “Enter the gross value of the portion of the foreign trust that you are treated as owning.” While it is the case that line 23 was not completed in these instances, line 23 is required to be completed by the U.S. owner of a foreign grantor trust. The taxpayers receiving these letters are not reporting under Part II as they are not the U.S. owners of a foreign trust. The IRS letters request that the taxpayer furnish the line 23 information to avoid a penalty under Internal Revenue Code section 6677 despite the fact that line 23 is not required to be completed. In the case of a U.S. taxpayer filing Form 3520 but who is not required to complete Part II, such letters are incorrect and should not have been issued. These Forms 3520 were correctly filed and are not missing required information. Penalties are therefore not warranted.
2. With respect to Form 3520, Part I, Line 13, the letters indicate that this line was checked “Yes” and request that the taxpayer complete the transfer information on Schedule B. However, Form 3520 was completed correctly and filed timely, and

Part I, Line 13 was correctly checked “No.” These IRS letters require a response under threat of penalty.

3. With respect to Form 3520, Page 1, Lines 2a through 2g, the letters request that the taxpayer provide information regarding the name, employer identification number, and location of the foreign trust when the submitted Form 3520 already includes such information as required on Form 3520, Page 1, Lines 2a through 2g.
4. Some of the letters state that Forms 3520 were filed late when the forms were filed timely.
5. Some of the letters request that an explanation be provided as to why a Form 3520 was filed under FAQs 17 and 18 of the 2011 Offshore Voluntary Disclosure Initiative (“OVDI”) when an explanation was already attached to the Form 3520 when filed.
6. Several of the letters state that Forms 3520 were filed late and requested an explanation for the late filing to avoid penalties, when such forms were submitted on time pursuant to and in full compliance with the 2011 OVDI with a detailed reasonable cause explanation statement attached as required under FAQs 17 and 18 of the 2011 OVDI. We suggest that the group at the IRS that issues such letters completely review the attachments to the Form 3520 and if necessary check with the group at the IRS that is in charge of the OVDI program before issuing letters to taxpayers regarding this and the item 5 matter.

We request that the IRS check into the source of our concerns and correct this systemic problem with respect to the processing of Forms 3520, and consider ceasing the issuance of these incorrect letters. In addition, we request the IRS consider providing an announcement that such erroneous letters do not require a response. Such action will allow taxpayers to avoid incurring considerable time and expense in having their tax preparers respond to these incorrect letters.

The AICPA is the national professional organization of certified public accountants comprised of approximately 377,000 members. 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 or would like to discuss this further, please contact Karen Brodsky, Chair, AICPA Foreign Trust Task Force, at [kbrodsky@deloitte.com](mailto:kbrodsky@deloitte.com), or (212) 436-3025; or Eileen Sherr, AICPA Senior Technical Manager, at [esherr@aicpa.org](mailto:esherr@aicpa.org), or (202) 434-9256.

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Sincerely,

A handwritten signature in black ink that reads "Patricia A. Thompson". The signature is written in a cursive style with a large initial "P" and "A".

Patricia A. Thompson, CPA  
Chair, AICPA Tax Executive Committee