



October 8, 2010

The Honorable Max Baucus, Chairman
Senate Committee on Finance
511 Hart Senate Office Building
Washington, DC 20510

The Honorable Sander M. Levin, Chairman
House Committee on Ways & Means
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Charles E. Grassley
Ranking Member
Senate Committee on Finance
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Dave Camp
Ranking Member
House Committee on Ways & Means
341 Cannon House Office Building
Washington, DC 20515

Dear Chairmen Baucus and Levin, and Ranking Members Grassley and Camp:

The American Institute of Certified Public Accountants (AICPA) is pleased to present Congress and (by way of copy) the Administration with a proposal to change the original and extended due dates for several important tax and informational returns. While many of these due dates have been in place for years, we believe compelling reasons now exist for a change. The interconnectedness of business entities and those who own them now demand a more logical flow of information between parties. The returns no longer serve only as a means for taxpayers to self-report and pay their tax liability to the government. Taxpayers, as part of their tax compliance process, equally rely upon the return information of others to properly report their own tax liability to the government. Individuals, S corporations, C corporations, trusts and other partnerships may all invest in or operate partnerships and, if they do, require Schedules K-1 (Form 1065) before completing their returns. The current two-due-date system for most major returns does not reflect a logical flow of information between or among parties and it is thus imperative that changes be made. Page 5 of this letter details our [specific proposal](#).

BACKGROUND

Historically, calendar year corporations – both C and S -- have been required to file their tax returns by March 15th (with an extension, by September 15th) while individuals, trusts and partnerships have been required to file by April 15th (with an extension, by October 15th). Since January 1997, when the “check-the-box¹” regulations became effective and “eligible” entities found it easy to file as partnerships, the formation of new limited liability companies, limited liability partnerships and similar state law entities (collectively, LLEs) increased exponentially resulting in a dramatic increase in the number of partnership information returns being filed. Understandably, the number of individuals and entities, including S and C corporations, trusts and estates *that invest in LLEs and other federal tax partnerships* has grown significantly causing a dramatic increase in the number of taxpayers that rely on information from partnerships and other pass-through entities in determining taxable income.

The use of tiered partnership structures has also increased in recent years – and with it, the complexity of tax compliance -- by vehicles such as hedge funds, master limited partnerships, business trusts, series

¹ See Treasury Reg. §§301.7701-1 through 301.7701-3.

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LLCs and private equity funds to address nontax issues such as litigation and other risks and to facilitate increasingly complex financial transactions. Further, the increased complexity of the Internal Revenue Code and other tax laws has resulted in the need for significantly greater information gathering and analysis. In this new environment, practitioners and taxpayers often find that the current ordering of tax return due dates for partner (*i.e.* individual, C corporation, S corporation, trust, or other partnership) and partnership make the timely filing of complete and accurate returns difficult if not impossible to meet. In far too many cases, it has become impossible for the ultimate owner of a partnership interest to obtain the information needed to prepare tax returns on a timely basis. Increasingly complex partnership transactions and reporting requirements have added to return preparation time as additional analysis time is needed to ensure accuracy. In many cases, the partners' returns are not prepared by the same individuals or firms that prepare the partnership returns and, thus, the availability of required information is often out of the preparer's control.

Corporate partners, both C and S, must often request an extension when they do not receive their partnership Schedules K-1 (not due until April 15) in time to meet the original due date of their return -- March 15 for calendar year corporations. Such corporate partners may ultimately be forced to use estimates in completing their returns (which can only be extended to September 15 for calendar year taxpayers), because the partnership return, historically, was filed later, on the extended due date of October 15. Even under the regulations mentioned in more detail below, the corporation might not receive the Schedule K-1 from its partnership investment until the due date of the corporate return, leaving timely, accurate compliance difficult or impossible.

Similarly, partners that are individuals and trusts -- historically due on the same day as the partnership return -- might not have received their partnership Schedules K-1 until the extended due date of their return thus causing undue hardship for both taxpayers and the IRS, particularly if amended returns need to be filed to correct original returns on which estimates of partnership income, deductions and other items had to be used. This problem was alleviated for individuals, but exacerbated for trusts, as mentioned next.

Treasury and the IRS recognized the difficulty partners were having obtaining timely information from partnerships when they issued temporary and proposed regulations² effective for taxable years ending on or after September 30, 2008 that changed the extended due date for calendar year partnerships and trusts from October 15th to September 15th. The stated goal of the regulation was to "help individuals better meet their filing obligations" by ensuring "that all taxpayers have the information they need to file timely and stay in compliance with the law."³

In correspondence to the IRS dated January 24, 2008,⁴ we indicated that a change to the extended partnership due date would assist a significant percentage of taxpayers, but that ultimately, legislation would provide a more complete solution to the need for coordination of tax return due dates for all types of partners. The regulatory answer, while helpful, is not a comprehensive solution because it only

² REG 115457-08.

³ IR-2008-84, June 30, 2008. <http://www.irs.gov/newsroom/article/0,,id=184347,00.html>.

⁴ See AICPA Letter to Acting Commissioner Linda Stiff, [Due Date for Form 1065, Schedule K-1](#).

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addresses the needs of individuals. The regulation fails to address the needs of corporate partners and the impact of having calendar year C corporations, S corporations, partnerships, and certain trusts all due on the same extended date of September 15.⁵ In releasing the regulation in June 2008, newly appointed Commissioner Douglas Shulman acknowledged that same-day deadlines cause hardship when he said “[W]e are eliminating the same-day deadline for these returns [partnership, individual and trust], which causes needless hardship and puts the individual taxpayer in an awkward position.” Now that extended returns of partnerships, corporations and trusts are all due the same day (September 15), with only the extended returns of individuals⁶ due October 15, needless hardship has been created by having a same-day due date for non-individual taxpayers.

In an attempt to solve most of the issues created by having entities filing on the same date, the AICPA engaged over 30,000 of our members in two separate surveys devoted to this issue. Then, in the Spring of 2009, the AICPA formed a cross-disciplinary task force of partnership, trust, corporate and individual tax experts to explore the various due dates and to consider whether any combination of changes to those due dates would provide a better overall flow of required tax return information between providers and recipients thus improving not only individual return compliance, but also that of business entities and trusts. While it is not the purpose of this letter to detail all of the various permutations that were considered by the Task Force, we remain open and willing to discuss the details of our deliberations with you at your request. Nevertheless, after (1) extensive analysis of various proposals; (2) meeting with staff members of the Joint Committee on Taxation, Treasury, the IRS and the National Taxpayer Advocate’s Office; (3) a pervasive review from within our Tax Division; and (4) receiving feedback on the impact on states from various state departments of revenue, the AICPA recommends the following changes to both original and extended return filing due dates.⁷

⁵ In correspondence to the IRS dated September 24, 2008, we requested that the IRS proposed regulatory change to 9/15 for the extended fiduciary (trust and estate - Form 1041) due date be reconsidered. See AICPA letter to IRS Commissioner Douglas Shulman and IRS Chief Counsel Don Korb, [Due Date for Form 1041, Schedule K-1](#).

⁶ Form 5500 also has an extended due date of October 15. We suggest allowing an automatic three and one-half month extension to November 15. But see AICPA letter to Treasury, IRS, DOL and PBGC dated October 5, 2010 at <http://www.aicpa.org/InterestAreas/Tax/Resources/EmployeeBenefits/Advocacy/DownloadableDocuments/AICPA%20Letter%20Requesting%205500%20Extension.pdf> for a request for a temporary one-year extension to December 15, 2010.

⁷ This letter is not intended to comprehensively address all AICPA positions regarding needed due date changes. For example, see page 17 of the [AICPA Compendium of Legislative Proposals \(Simplification and Technical Proposals\)](#) issued July 1, 2009 for a recommendation that the due date of Foreign Bank Account Reporting Form TDF 90-22.1 be changed to October 15, either as an original or extended due date. See also pages 8-9 of the [AICPA Comments on Foreign Trust Reporting Issues](#) submitted to IRS and Treasury January 31, 2007 where we recommend that the due date of Form 3520-A be either changed to April 15 or penalty relief for first year filing violations be granted. See also page 2 of the [AICPA Follow-up Comments on Foreign Trusts Reporting Issues](#), submitted to the IRS on June 12, 2008, where we requested that the Form 3520 be allowed to be extended separately from the income tax return of the owner in order to allow extensions where the beneficiary’s income tax return is not also being extended.

RECOMMENDATION

Current Due Dates – Calendar Year Returns

RETURN TYPE	FORM	ORIGINAL DUE DATE	EXTENDED DUE DATE	AUTHORITY
C Corporation	1120 Series	March 15	September 15 ⁸	§6072(b)
S Corporation	1120S	March 15	September 15 ⁹	§6072(b)
Partnership	1065	April 15	September 15	§6072(a); T.D. 9407
Trust and Estate	1041	April 15	September 15	§6072(a); T.D. 9407
Individual	1040	April 15	October 15	§6072(a)
Employee Benefit Plans	5500	July 31	October 15	Form 5500 Instructions; §301.6058-1(a)(4)

Proposed Due Dates – Calendar Year Returns¹⁰

RETURN TYPE	FORM	ORIGINAL DUE DATE	EXTENDED DUE DATE
Partnership	1065	March 15	September 15
S Corporation	1120S	March 31	September 30
Trust and Estate	1041	April 15	September 30
C Corporation	1120 Series	April 15	October 15
Individual	1040	April 15	October 15
Employee Benefit Plan	5500	July 31	November 15

We find it both logical and helpful to other entities that the first return due should be the partnership Form 1065. This is because all other entities and individuals can be partners in a partnership and may thus be anticipating one or more Schedules K-1 from their partnership investments. We find it appropriate for S corporations to file next because once they receive required information from their partnership investments, they will likely be able to complete their returns and provide Schedules K-1 (Form 1120S) to their shareholders and deemed shareholders who may be individuals, trusts/beneficiaries and estates. Once partnership and S corporation returns have been filed and owners have received their Schedules K-1, individuals, trusts and C corporations will all have the information they need from their pass-through

⁸ Section 6081(b) allows corporations an automatic 3-month extension to file a return, yet Treas. Reg. §1.6081-3(a) allows corporations an automatic 6-month extension for that same return. We propose modifying the statute to conform to longstanding regulation by allowing a statutory 6-month extension for corporate returns.

⁹ *Id.*

¹⁰ While we are not recommending any changes to the due date of Form 990, we do suggest that Treas. Reg. §1.6081-9(a) and (b)(1) be amended to permit an automatic 6-month regulatory extension on Form 7004 in place of the current requirement to first obtain an automatic 3-month extension on Form 8868 and to then apply for an additional 3 months upon showing of reasonable cause.

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entity investments to enable them to file accurate and timely returns. Finally, employee benefit plans required to file Form 5500 currently have just a two and one-half month extension to file their returns by October 15, which under current law is 30 days after the corporate filing deadline and the same day as individual returns. These returns should be permitted a deadline of three and one-half months to continue to provide 30 days beyond the filing of the benefit plan's related corporate and individual returns.

A note on the proposed five and one-half month trust extension - While many trusts also function as pass-through entities, and in some cases beneficiaries may need extra time to prepare returns, feedback from trust practitioners indicates that an original due date for trusts of April 15 will not cause undue delays in the filing of Form 1040. A few examples follow as to why the majority of trusts will not have a conflict with a due date that is simultaneous with Form 1040: (1) Complex trusts that don't make distributions, and Electing Small Business Trusts which hold S corporation stock, pay tax at the trust level and so do not issue Schedules K-1 to be used by beneficiaries; (2) beneficiaries of Qualified Subchapter S Trusts, the other major trust that may be an S corporation shareholder, are deemed to directly own the S corporation stock even though it is held in trust and thus receive a Schedule K-1 (Form 1120S) directly from the S corporation rather than from the trust; (3) trust returns that do require the issuance of Schedules K-1 are frequently prepared by the same firms that prepare the returns of the beneficiaries thus creating efficiency by giving more control to the preparer over the timely filings of these related returns. *Nevertheless, to alleviate any concerns that trusts may cause a delay in the filing of Form 1040, trusts should be uniquely limited to an extension period of five and one-half months (to September 30 for calendar year trusts) to ensure that beneficiaries have time to accurately file their extended return by October 15. All other extension periods that are the subject of this proposal should remain or be returned to a six-month period.*

The AICPA believes that C corporations will largely benefit from the due date changes to April and October 15. Many C corporations extend their returns because they are waiting on audited financial statements which typically arrive by the end of March. These corporations may no longer need to extend and if so would be able to file by the new original due date of April 15 (or the 15th day of the fourth month following the close of the taxable year for fiscal year corporations). Because due dates for estimated tax payments would not change, revenue impact on the government is expected to be minimal.

SUMMARY

Our proposal features the following points:

- Moves the original due date of partnership returns one month earlier and reinstates a 6-month extension (3/15 and 9/15);
- Separates the due dates of S and C corporation returns;
- Maintains the longstanding due dates of Form 1040 (4/15 and 10/15);
- Moves the original due date of S corporation returns to two weeks after partnership returns and two weeks before the original due date of individual, trust and C corporation returns (3/31);

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- Moves the extended due date of both S corporation and trust returns so that they are two weeks after partnership returns and two weeks before the extended due date of individual and C corporation returns (9/30);
- Moves the original and extended due date of C corporation returns one month later (4/15 and 10/15); and
- Maintains the original due date of employee benefit plan returns on July 31 but allows for automatic three and one-half month extension by moving the extended due date one month later (11/15).

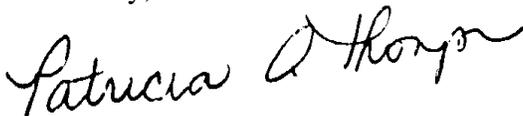
The AICPA has considered the views of thousands of practitioners and others during the research phase of this project. After extensive deliberation, we have concluded that statutory (and additional regulatory) changes to the return due dates as outlined above are necessary to (1) improve the flow of information between taxpayers; (2) improve the accuracy of tax and information returns; and (3) reduce the need to file amended returns, thus significantly simplifying tax administration for the government, taxpayers and practitioners.

* * * * *

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 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 business, as well as America's largest businesses.

If you have any questions about this matter, please contact me at (401) 831-0200 or patt@pgco.com; Hughlene A. Burton, Chair of the Return Due Date Task Force at (704) 687-7696 or hughlene.burton@uncc.edu; or Marc A. Hyman, AICPA Technical Manager at (202) 434-9231 or mhyman@aicpa.org.

Sincerely,



Patricia A. Thompson
Vice-Chair, Tax Executive Committee

CC: The Honorable Members of the House Ways & Means Committee
The Honorable Members of the Senate Finance Committee
The Honorable Michael F. Mundacca, Assistant Treasury Secretary (Tax Policy)
The Honorable Douglas H. Shulman, Commissioner of Internal Revenue

Attachment: Proposed Implementing Legislative Language

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**ATTACHMENT TO AICPA LETTER
RECOMMENDING MODIFICATIONS TO VARIOUS RETURN DUE DATES**

111TH CONGRESS
1ST SESSION

H.R./S. _____

To amend and simplify the Internal Revenue Code of 1986 to provide for the logical flow of return information between partnerships, corporations, trusts, estates and individuals; to thereby better enable each party to submit timely, accurate returns; to reduce the need for extended and amended returns; to provide for a congressional directive that the Secretary of the Treasury should further amend, without delay, its regulations to provide modified extension due dates; and to conform the automatic corporate extension period to longstanding regulatory rule.

IN THE HOUSE OF REPRESENTATIVES/SENATE OF THE UNITED STATES

Mr./Mrs. _____ introduced the following
bill; which was read twice and referred to the Committee on Ways & Means/Finance

A BILL

To amend and simplify the Internal Revenue Code of 1986 to provide for the logical flow of return information between partnerships, corporations, trusts, estates and individuals; to thereby better enable each party to submit timely, accurate returns; to reduce the need for extended and amended returns; to provide for a congressional directive that the Secretary of the Treasury should further amend, without delay, its regulations to provide modified extension due dates; and to conform the automatic corporate extension period to longstanding regulatory rule.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, REFERENCE.

(a) SHORT TITLE. -- This Act may be cited as the "Tax Return Due Date Simplification and Modernization Act of 2010".

(b) AMENDMENT OF 1986 CODE. -- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986, as amended.

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SEC. 2. NEW DUE DATE FOR PARTNERSHIP FORM 1065, S CORPORATION FORM 1120S AND C CORPORATION FORM 1120

(a) IN GENERAL. -- Section 6072(a) (relating to the general rule for the time for filing income tax returns) in modifying the due date of C corporations and partnerships shall now apply to C corporations, but shall no longer apply to partnerships and is accordingly amended to read as follows:

"(a) General Rule. -- In the case of returns under section 6012, 6013 or 6017 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section."

(b) Section 6072(b) in modifying the due dates of S and C corporations is amended to read as follows:

"(b) Returns of certain corporations

Returns of S corporations under sections 6012 and 6037 made on the basis of the calendar year shall be filed on or before the 31st day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the last day of the third month following the close of the fiscal year. Returns required for a taxable year by section [6011\(c\)\(2\)](#) (relating to returns of a DISC) shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year."

(c) New subsection (f) shall be added at the end of section 6072 and shall read as follows:

"(f) Returns of partnerships

Returns of partnerships under section 6031 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year."

(d) EFFECTIVE DATE. -- The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

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SEC. 3. CONGRESSIONAL DIRECTIVE FOR THE SECRETARY OF THE TREASURY TO MODIFY THE APPROPRIATE REGULATIONS, WITHOUT DELAY, IN ACCORDANCE WITH THE PURPOSE OF THIS ACT.

In order to achieve the greatest positive impact for taxpayers and for the government, upon enactment of this bill, the Secretary of the Treasury or his delegate should expeditiously modify appropriate regulations to provide as follows:

- (a) that the maximum extension for the returns of partnerships filing on Form 1065 should be returned to a 6 month period ending on September 15 for calendar year taxpayers;
- (b) that the maximum extension for the returns of trusts filing Form 1041 should be 5 and one-half months ending on September 30 for calendar year taxpayers;
- (c) that the maximum extension for the returns of S and C corporations should each remain at a 6 month period ending on September 30 and October 15 respectively, for calendar year taxpayers;
- (d) that the maximum extension for individual taxpayers should remain without change at 6 months ending on October 15 for calendar year taxpayers;
- (e) that the maximum extension for the returns of employee benefit plans filing Form 5500 should be an automatic 3 and one-half months ending on November 15 for calendar year taxpayers;
- (f) that the due date of Form 3520-A (relating to the Annual Information Return of Foreign Trust with a U.S. Owner), which is currently prescribed under Administrative authority, be changed to April 15 with a maximum 6 month extension; and
- (g) that the maximum extension for the returns of organizations exempt from income tax filing Form 990 should be an automatic 6 month period ending on November 15 for calendar year filers.

SEC. 4. CORPORATIONS PERMITTED STATUTORY AUTOMATIC 6 MONTH EXTENSION OF INCOME TAX RETURNS

Section 6081(b) shall be amended by replacing the number “3” with the number “6”.