

August 11, 2023

United States House Committee on Ways & Means
Tax Subcommittee
1139 Longworth HOB
Washington, D.C 20515

Re: Discussion of IRS Tax Process Issues

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 19,000 CPAs in public practice, industry, government and education, International Taxation Committee has provided comments on a discussion of IRS tax process issues that need to be addressed.

If you would like additional discussion with us, please contact Helga Trocha, Immediate Past Chair of the International Taxation Committee, at 201-712-9800, Chaim Kofinas, Chair of the International Taxation Committee, at 332-242-6016, or Keith Lazarus, NYSSCPA staff, at (212) 719- 8378.

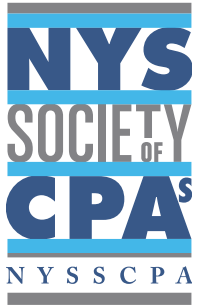
Sincerely,
N Y S S C P A

A handwritten signature in blue ink, appearing to read "Liren Wei".

N Y S S C P A

Liren Wei
President

Attachment



**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS
DISCUSSION OF IRS TAX PROCESS ISSUES**

August 11, 2023

Principal Drafters

**Linda M. Bruckner
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As tax practitioners we would like to bring to your attention three specific issues adversely affecting taxpayers and the tax preparation industry. These issues include: Proper and Timely Passage (Institution) of New Tax Laws, Relief For Punishing Penalties For Failure OF Foreign Reporting and Lack of Coordination between IRS correspondence Division and the Collection Division. These issues are presented with simple and feasible solutions. We ask that our concerns and proposed resolutions be seriously considered and implemented. Our suggestions represent a reasonable and a fairer process for the taxpayers.

Proper And Timely Institution Of New Tax Laws

Issue:

Over the past few years, Congress and the Executive office have enacted legislation that has placed unnecessary burdens on taxpayers, tax professionals, IT/software industries and others who support the tax industry. We have seen an increase in retroactive changes, laws enacted without enough thought to the associated issues, and implementation dates too soon after the legislation is passed to allow the drafting of guidance, forms, and adequate form instructions. The financial effect and toll on those striving to comply with the tax laws and those working within the industry cannot be ignored.

Our industry is expected to operate at a high level of accuracy. However, the late, delayed and incomplete enactment of the laws poses a significant burden and hinderance in maintaining this level of accuracy we are expected to achieve. While the financial penalties the IRS assesses may be significant, but the additional time of redoing work is often a financial burden on the professionals who bill for their time and cannot bill for the work, or it becomes a financial burden on the taxpayers who are billed for the rework. Either scenario is unfair.

The physical and mental demand is “taxing” and takes a toll on the professionals. It is labor intensive to constantly keep “current,” monitor for new updates, and plan in an uncertain environment. Prior to this government’s new practice of “new laws at the last minute,” tax professionals were already struggling to keep their standards high and meet deadlines.

Recommendation:

We need to go back to issuance of proposed regulations, then temporary regulations, then regulations. The new laws need to be vetted before compliance is required. Forms and instructions should be finalized months before the date of implementation. IT industry should design software, tax professionals need to digest and prepare for the new filings, and business and individuals must be given a chance to plan accordingly. Additionally:

- 1) Limited cases of retroactive tax law changes. (An exception could be made for an extension of an already existing tax credit when the extension is done prior to the end of the year to which it will apply.)
- 2) The enactment of tax laws sufficiently in advance of the tax filing season to allow

- a. the IRS to create a tax form or make changes to an existing tax form, and
 - b. the tax software providers to include the form in the software prior to the start of the filing season.
- 3) The enactment of tax laws sufficiently in advance of the tax filing season to allow for the IRS to publish complete form instructions and provide other appropriate guidance.
 - 4) More thought prior to passing legislation as to the full consequences of a new law and the compliance aspect.
 - 5) More robust form instructions that have been reviewed and analyzed for:
 - a. completeness (no loopholes or unaddressed issues), and
 - b. comprehension and clarity.
 - 6) More funding to the IRS so that they have resources to supply the needed guidance.

Analysis:

It is difficult to prepare a tax return when Congress and the IRS are still figuring out the nuances, the calculations, and revising the forms. It is wrong to expect tax professionals to constantly monitor for revisions and updates added after the instructions are printed. The absence of complete, correct, and thorough instructions especially when a deadline is past or looming ahead is stressful and exhausting.

The inadequacy of the instructions, incomplete instructions, lack of a complete “statute” makes it labor intensive to be compliant with the new law. It takes time to digest and understand the new law and instructions. It takes time to compile the information for data entry for an ultimate completion of an accurate form.

The software industry, which tax professionals rely on, require time to understand the new statutes and write code for new and/or revised forms. However, the process is impeded when Congress and the IRS tweak laws after the fact. Tax software providers need complete and concise laws to translate into code and need time to implement and test the code, hence a delay in when tax professionals have access to the software. The constant loose ends and the changes and updates require revisions to the code and a delay in the software rollout.

Retroactive laws and laws requiring immediate enactment undermine tax and business planning. Taxpayers have a right to know the impact of laws on their decisions at the time those decisions are made. Uncertainty negatively impacts businesses at home and their ability to compete in the global market.

Tax professionals have been placed in a position where they must advise taxpayers on courses of action and choices of different actions based on uncertain laws. Dependent on the conclusion, “finalization” of the law may necessitate an amended return, possible penalties, and interest or an overpayment of tax by the taxpayer. It is unconscionable to force a taxpayer to choose between the cost of amending a return or claiming a refund.

The tax filing season has been shortened considerably due to the additional time needed for reporting institutions, such as brokerage firms, to provide complete and accurate tax information.

With Congress and the Executive office enacting laws for immediate or retroactive compliance, the government has created a risk to the industry.

The 10th Amendment was enacted to monitor and regulate commerce. It was meant to curtail large organizations from abusing power and position; to ensure businesses conduct themselves fairly, honestly, and with integrity; and also to establish standards for businesses to operate such as: a safe work environment, fair competition, transparency (no price fixing), fair wages, etc. The immediate or retroactive enactment of tax laws without a proper transition or vetting process, may be seen as an abuse of power and position, violating the essence of the 10th Amendment, because the enactments systemically adversely affect the tax industry, i.e. tax professionals, the IRS, the software industry and taxpayers.

Relief for Foreign Reporting

Issue:

Foreign reporting is complex with severe penalties for non-willful lack of compliance and for errors. There is a significant population who are not sophisticated in their knowledge of tax, finance, law, etc., but find themselves with a foreign reporting requirement, subsequently resulting in a severe penalty.

Recommendation:

Provide simpler compliance and clearer guidance for the reporting of foreign pensions, gifts, trusts, and inheritance.

Implement a tiered compliance structure for taxpayers. A simple filing requirement disclosure, with simple guidelines, an “EZ” form.

Allow for a user-friendly reasonable cause abatement and procedure. Taxpayers should not be required to engage an expensive attorney to avail themselves of an abatement. The process should not be complicated. An error in a reasonable cause statement should not void the abatement or subject the taxpayer to a penalty, but provide guidance and an opportunity to correct.

Allow for a more reasonable penalty structure for taxpayers whose lack of compliance or errors was merely due to lack of sophistication in tax matters, a misunderstanding, or a touch of “naivete.” Penalties should be more in line with the value of the estate, trust, or account, with lesser penalties for smaller accounts and estates and an incremental structure, increasing the penalty for more valuable estates and trusts, etc.

A distinction in assessment of penalties and the ability to obtain an abatement needs to be made between tax evasion, tax avoidance and unintentional mistakes, errors and non-reporting.

Lack of IRS Coordination Between the Division Responsible for Responding to Taxpayer Correspondence and the Collection Division

Issue:

After responding in writing to an IRS assessment notice (for example, notice CP15 or CP504) in which the taxpayer disagrees with the assessed tax and/or penalties, the taxpayer will usually receive a response from the IRS indicating that they will look into the issue and respond in 45 days. Often, after two months have passed from the initial 45-day letter, the taxpayer will receive additional correspondence indicating that the IRS needs more time to investigate the matter. During this entire time, there is no automatic hold on the collection activity. In order to stop the collection activity and the eventual threat of a levy, the IRS must be called to request a hold on the account. Holds are usually only granted for six weeks. This necessitates calling back every six weeks until the issue is finally resolved by the IRS, which can take anywhere from six to 18 months. This is a waste of time for both tax practitioners and the IRS.

Recommendation:

In conjunction with the 45-day letter, the IRS should place a hold on the collection activity until they have investigated the issue and responded to the client. As an alternative, Automated Collection System (“ACS”) should grant holds on collection activity that more accurately match the IRS response time.