



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

February 15, 2013

Mr. Steven T. Miller
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

RE: Delay in the Release of Tax Forms

Dear Mr. Miller:

The American Institute of Certified Public Accountants (AICPA) appreciates the tremendous challenges the Internal Revenue Service (IRS) faces in administering the tax filing season each year, which includes the timely release of forms, the testing of systems, and responding to taxpayer inquiries. When the IRS experiences a significantly challenging filing season like this one, the challenge is not limited to the government. The adverse impact extends to taxpayers and tax return preparers who must also face additional burdens attributable to the disruption to normal and efficient work streams and planning. In this context, our members and their clients are facing a very compressed and difficult filing season due to a significant delay in the filing process.

The AICPA is the world's largest member association representing the accounting profession with nearly 386,000 members in 128 countries and a 125-year heritage of serving the public interest. 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.

This letter is a response to the IRS's announcement on January 30, 2013 involving the delay in the release of 31 tax forms because of the government's need to update the forms and test processing systems, due primarily to the late enactment of tax legislation. While we are pleased with the recent release of Form 4562 (Depreciation and Amortization) and Form 8863 (Education Credits), we remain concerned about the continuing delay in the release of the 29 other forms.

The resulting impact is that the IRS will not accept tax returns that include these delayed forms until later this month or even into March. The release of forms at such a late date compresses the time that a tax preparer has for tax return preparation and review. It will also cause taxpayers to file more extensions for tax returns; however, extensions do not completely solve the problem. Tax preparers must still perform the necessary preliminary work to discern the amount of the tax payment due with the extension. These

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forms delays are disruptive to an accounting firm's internal procedures, causing the firm to first conduct an initial review process involving the extension, and then a second preparation and review process later to ensure proper completion of the tax return.

We are particularly concerned about the impact the delays in forms releases will have on the processing of partnership, S corporation, C corporation and other business returns due on March 15. For example, Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations) is on the list of forms to be released by or in March. Numerous businesses will need to file this form, and it will be challenging for these companies to complete the processing and filing of their business return by March 15, absent filing a request for an extension. The proper completion of international forms like the Form 5471 is extremely complicated, and it will be a challenge to complete the filing of the business return by the March 15 due date – and perhaps within only 7 days-time (assuming an early March release of a form like Form 5471) given the processes that are necessary to ensure accuracy, not the least of which involves providing clients with adequate time for review.

We believe that a number of individual taxpayers – particularly taxpayers who file one of the delayed forms or needs a Form K-1 from a flow-through entity in order to file their return – will also be negatively impacted by the delays. Although individual income tax returns and related first quarter estimated tax payments are not due until April 15, taxpayers and their preparers will have a very compressed period in which to gather all of the necessary information in order to file an extension and make an extension payment (which includes an analysis of the first quarter estimated tax payment for this year). In other words, the delay in filing of business returns also affects those taxpayers receiving a Form K-1 from the entity.

With our members facing a potentially very compressed filing season, the AICPA is interested in entering into a dialogue with the IRS on the following issues:

1. Failure-to-file and failure-to-pay penalties. Internal Revenue Code (“Code”) section 6651 provides the IRS authority to assess failure-to-file or failure-to-pay penalties – or both – against a taxpayer unless the taxpayer is found to have “reasonable cause” for the delinquencies. While we hope that the ability to extend the due dates of returns will ameliorate the impositions of such penalties in the current situation, we note that there may be some cases where form delays contribute to late filings and/or payments. Despite the availability of “reasonable cause” relief from assessment of these penalties, our members report that taxpayers are finding it more difficult to establish grounds for reasonable cause relief with the IRS. Thus, under the current environment whereby the IRS finds it necessary to delay the release of certain forms, clients should not incur costs to request penalty abatement and argue for reasonable cause. Otherwise, these cases involving penalty relief will likely end up in Appeals, which is an inefficient use of both IRS and taxpayer resources. At a minimum, the IRS should instruct tax

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- examiners to more readily accept grounds for reasonable cause relief if the taxpayer's facts demonstrate that the challenges of this tax season caused the return's delinquency.
2. Estimated tax penalty relief. The IRS should consider granting taxpayers relief under Code section 6654(e)(3) which authorizes the IRS to waive an estimated tax penalty based on unusual circumstances and for reasons of equity and good conscience. Similar to the above penalties, the IRS should consider providing guidance that acknowledges the difficulty of this filing season as an appropriate basis of relief.
 3. More clarity in the release of tax forms. Taxpayers and tax return preparers would benefit from the IRS providing more clarity about the timing for the release of the remaining tax forms, a circumstance which would foster greater tax compliance and a reduction in tax filing delays. In the future, we believe the IRS would benefit from closer consultation with the AICPA and other stakeholders about the government's plans with respect to the timing of form releases.

We appreciate your attention to this important matter. If you have any questions, please contact me at (304) 522-2553, or jporter@portercpa.com; Kathy Petronchak, Chair of the IRS Practice and Procedures Committee, at (202) 758-1480, or kpetronchak@deloitte.com; or Benson S. Goldstein, AICPA Senior Technical Manager-Taxation, at (202) 434-9279, or bgoldstein@aicpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Porter". The signature is fluid and cursive, with a large initial "J" and "P".

Jeffrey A. Porter, CPA
Chair, Tax Executive Committee