IMPROVE THE FILING PROCESS

Legislative Recommendation #3

Treat Electronically Submitted Tax Payments and Documents as Timely If Submitted on or Before the Applicable Deadline

SUMMARY

- *Problem:* If a taxpayer mails a payment or tax return to the IRS that is postmarked by midnight on the due date, the payment or tax return will be considered timely even if it is received a week later. If the taxpayer submits the same payment or return to the IRS electronically on the due date, however, it may be considered late if the IRS receives and processes it the next day. This dichotomy can harm taxpayers who make timely electronic submissions, and it favors paper transmission over electronic transmission – exactly the opposite incentive the rules should provide.
- *Solution:* Provide that a payment or document submitted by midnight on the due date will be considered timely even if the IRS does not receive and process it that day.

PRESENT LAW

IRC § 7502(a)(1) provides that if certain requirements are satisfied, a mailed document or payment is deemed filed or paid on the date of the postmark stamped on the envelope. Therefore, if the postmark shows a document or payment was mailed by the due date, it will be considered timely, even if it is received after the due date.

IRC § 7502(b) and (c) provide only that this timely-mailed/timely-filed rule (commonly known as the "mailbox rule") applies to documents and payments sent by U.S. postal mail, designated private delivery services, and electronic filing through an electronic return transmitter. It does not apply to all filings and payments. With respect to electronic filing, the Secretary is authorized to issue regulations describing the extent to which the mailbox rule shall apply.[1] To date, the only regulations the Secretary has issued relating to electronic filing cover documents filed through an electronic return transmitter (*i.e.,* documents that are e-filed).[2]

REASONS FOR CHANGE

The statutory mailbox rule in IRC § 7502 does not apply to the electronic transmission of payments to the IRS. In addition, the mailbox rule does not apply to the electronic filing of time-sensitive documents (except documents filed electronically through an electronic return transmitter), including those transmitted by fax, email, the digital communication portal, or upload via an online account.[3] If the IRS does not receive an electronically submitted document or payment until after the due date, the document or payment

1 IRC § 7502(c)(2). While this provision authorizes the Secretary to extend the mailbox rule for electronic filing, it does not authorize the Secretary to extend the mailbox rule for electronic payments.

2 Treas. Reg. § 301.7502-1(d).

3 *See* Treas. Reg. § 301.7502-1(d)(3)(i) (containing a definition of an electronic return transmitter). *See also* Rev. Proc. 2007-40, 2007-1 C.B. 1488 (providing a list of documents that can be filed electronically with an electronic return transmitter).

is considered late, even if the taxpayer can produce confirmation that they transmitted the payment or document on or before the due date. This comparatively unfavorable treatment of electronically submitted documents and payments undermines the IRS's efforts to encourage greater use of digital services and imposes additional cost and burden on taxpayers and the IRS.

Along similar lines, the IRS encourages U.S. taxpayers to make payments electronically, often by using the Treasury Department's Electronic Federal Tax Payment System (EFTPS). However, the EFTPS website displays the following warning: "Payments using this Web site or our voice response system must be scheduled **by 8 p.m. ET the day before the due date** to be received timely by the IRS" (emphasis in original).[4] This limitation applies to all payments.

> *Example:* Based on the bolded language on the EFTPS website, if a taxpayer owes a balance due on April 15 and mails the payment to the IRS before midnight on April 15, the payment will be considered timely, even if it takes a week or longer for the IRS to receive, open, and process the check. If the same taxpayer submits the payment using EFTPS, the payment will be considered late if submitted after 8 p.m. on April 14 (28 hours earlier), even though the payment generally would be debited from the taxpayer's account on April 16 – often a week sooner than if submitted by postal mail.

This disparity in the treatment of mailed and electronically submitted payments makes little sense. As compared with a mailed check, an electronic payment is received more quickly, is cheaper to process, and eliminates the risk that a mailed check will be lost or misplaced. Yet, rather than encouraging taxpayers to use EFTPS, an earlier deadline serves as a deterrent.

Despite the bolded warning on the main EFTPS website, the related FAQs describe circumstances in which the IRS will credit both business and individual tax payments on the date the payment is made.[5] For example, the FAQs state that business tax payments of $1 million or less made before 3 p.m. Eastern Time (ET) on the due date will be considered timely. While 3 p.m. ET on the due date is certainly better than 8 p.m. ET the day before the due date, the parameters detailed in the FAQs do not go far enough. In addition, it is unclear why the Treasury Department has chosen to bury the more flexible time periods in the FAQs. Given these limitations and the temporary nature of FAQs and website information, the National Taxpayer Advocate recommends that Congress amend the mailbox rule in IRC § 7502 to add permanence and common sense, so taxpayers can rely on the timeliness of electronically submitted payments.

RECOMMENDATION

- Amend IRC § 7502 to apply the statutory mailbox rule to all time-sensitive documents and payments electronically submitted to the IRS in a manner comparable to similar documents and payments submitted through the U.S. Postal Service or a designated delivery service and direct the Secretary to issue regulations implementing this requirement.[6]

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4 *See* U.S. Dep't of the Treasury, Electronic Federal Tax Payment System (EFTPS), https://www.eftps.gov/eftps (last visited Sept. 19, 2024).

5 EFTPS, *Frequently Asked Questions, What if I have to make a payment that is due today?*, https://www.eftps.gov/eftps/direct/FAQGeneral.page (last visited Sept. 19, 2024).

6 For legislative language generally consistent with this recommendation, see Tax Administration Simplification Act, S. 5316, 118th Cong. § 4 (2024), and H.R. 8864, 118th Cong. § 2 (2024).

Legislative Recommendation #4

Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers

SUMMARY

- *Problem:* The majority of paid tax return preparers are non-credentialed. Some have no training or experience. Taxpayers are harmed when incompetent tax return preparers make errors that cause them to pay too much tax, fail to claim tax benefits for which they are eligible, or subject them to IRS tax adjustments and penalties for understating their tax. The public Treasury is harmed when incompetent or unethical preparers claim tax benefits for which taxpayers are not eligible, leading to billions of dollars in improper payments.

- *Solution:* Require paid non-credentialed tax return preparers to pass a basic competency test, meet specified standards of conduct, and take annual continuing education courses about federal tax laws and procedures, and authorize the IRS to revoke the identification numbers of sanctioned tax return preparers.

PRESENT LAW

Federal law imposes no competency or licensing requirements on paid tax return preparers.

Credentialed individuals who may prepare tax returns, including attorneys, certified public accountants (CPAs), and enrolled agents (EAs), are generally required to pass competency tests and take continuing education courses (including an ethics component). Volunteers who prepare tax returns as part of the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs also must pass competency tests.

However, the vast majority of paid preparers are non-credentialed and are not required to pass competency tests, take any courses in tax return preparation, or follow prescribed standards of conduct.

IRC § 6109(a)(4) requires all tax return preparers, regardless of credential, to include an identifying number on tax returns they prepare. Treasury Regulation § 1.6109-2 requires preparers to apply for a Preparer Tax Identification Number (PTIN) from the IRS and include it on prepared returns.

REASONS FOR CHANGE

In recent years, the IRS has received over 160 million individual income tax returns annually. Paid tax return preparers prepare the majority of these returns. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate returns. Yet numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and the public fisc.

To protect the public, federal and state laws generally require lawyers, CPAs, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring tax return preparers to pass minimum competency tests.

The relationship between preparer credentials and overclaims in the Earned Income Tax Credit (EITC) program provides a stark illustration of the need to strengthen preparer standards. The EITC is one of the federal government's largest means-tested anti-poverty programs. It enjoys broad bipartisan support, but it also is plagued by a high improper payments rate. In fiscal year 2023, the IRS estimates the amount of improper payments was $21.9 billion, or 33.5 percent of dollars paid out.[1] IRS data suggests that a significant portion of improper payments was attributable to tax returns prepared by non-credentialed preparers. Among returns claiming the EITC prepared by paid tax return preparers in tax year 2022, non-credentialed preparers prepared 82 percent, and the returns they prepared accounted for 96 percent of the total dollar amount of EITC audit adjustments made on prepared returns.[2] Requiring that tax return preparers demonstrate competence and obtain continuing education is arguably the simplest and most effective step Congress can take to improve return accuracy and reduce improper payments.

Previous studies conducted by the Government Accountability Office, the Treasury Inspector General for Tax Administration (TIGTA), and others illustrate the extent – and adverse consequences – of inaccurate return preparation by unenrolled tax return preparers.[3]

In 2009, the IRS Commissioner decided to implement minimum standards for paid return preparers. Section 330 of Title 31 of the U.S. Code authorizes the Treasury Department to regulate "practice" before the IRS, and the Commissioner took the position that tax return preparation falls within the definition of "practice." On that basis, the IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a program under which all parties believed they could operate.[4] The IRS, together with the Treasury Department, implemented the program in 2011. However, a federal court later rejected the IRS's position that it had the legal authority to regulate tax return preparation, holding that "mere" tax return preparation did not constitute "practice" before the IRS.[5] As a result, the program was terminated.

In response, the IRS created a voluntary "Annual Filing Season Program." Non-credentialed preparers who participate must meet specific requirements, including taking 18 hours of continuing education each year, which includes an examined tax refresher course. If they meet the requirements, the IRS provides them with a "Record of Completion" they presumably can use in their marketing to attract potential clients.[6] However, this program is less rigorous than the one the IRS implemented in 2011, and most non-credentialed preparers do not participate. This voluntary program does not satisfy the objectives of a comprehensive regime.

Since the 2011 program was invalidated, the Obama, Trump, and Biden administrations have each previously asked Congress to pass legislation giving the Treasury Department the legal authority to establish and enforce minimum standards. Excerpts from their proposals include the following:

The Obama administration: "Incompetent and dishonest tax return preparers increase collection costs, reduce revenues, disadvantage taxpayers by potentially subjecting them to penalties and interest as a result of incorrect

1 Government Accountability Office (GAO), GAO-24-106927, *Improper Payments: Information on Agencies' Fiscal Year 2023 Estimates* 3, 5 (2024), https://www.gao.gov/products/gao-24-106927.

2 IRS, Compliance Data Warehouse, Individual Returns Transaction File, Return Preparers and Providers PTIN Database and Audit Information Management System – Closed Cases Database) (Jan. 25, 2024).

3 *See* GAO, GAO-14-467T, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors* (2014), https://www.gao.gov/products/gao-14-467t; GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006), https://www.gao.gov/products/gao-06-563t; TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008); Jamie Woodward, Acting Comm'r, N.Y. Dep't of Tax'n and Fin., Remarks at the IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009); *see also* Tom Herman, *New York Sting Nabs Tax Preparers*, Wall St. J., Nov. 26, 2008, https://www.wsj.com/articles/SB122765734841458181.

4 *See* IRS, Pub. 4832, Return Preparer Review (Dec. 2009), https://www.irs.gov/pub/irs-pdf/p4832.pdf.

5 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

6 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

returns, and undermine confidence in the tax system. . . . [Our] proposal would explicitly provide that the Secretary has the authority to regulate all paid tax return preparers."[7]

The Trump administration: "The Administration continues to hold that improved regulation of preparers is an effective means to improve voluntary compliance. Thus, the Administration requests that the IRS be granted the authority to require minimum standards for all 400,000 tax preparers without credentials."[8]

The Biden administration: "The current lack of authority to provide oversight on paid tax return preparers results in greater non-compliance when taxpayers who use incompetent preparers or preparers who engage in unscrupulous conduct become subject to penalties, interest, or avoidable costs of litigation due to the poor-quality advice they receive. The lack of authority affects revenues to the IRS when the resulting noncompliance is not mitigated during return processing. Regulation of paid tax return preparers, in conjunction with diligent enforcement, will help promote high quality services from paid tax return preparers, will improve voluntary compliance, and will foster taxpayer confidence in the fairness of the tax system."[9]

In addition to the longstanding reasons for establishing minimum preparer standards, Initiative 1.4 of the IRS Inflation Reduction Act Strategic Operating Plan provides a new reason.[10] The IRS is continuing to expand the capabilities of the online Tax Pro Account program to give preparers access to an increasing amount of confidential taxpayer information.[11] While there are considerable benefits to this plan, there are also significant security risks, including identity theft and other fraud. Allowing non-credentialed tax return preparers to access more confidential tax return information would increase these risks.

Some have argued that requiring preparers to pass a competency test and take annual continuing education courses would address competence but would not ensure preparers conduct themselves ethically. The National Taxpayer Advocate agrees that tax law competency and ethical conduct are distinct issues. However, we believe preparer standards would raise both competency and ethical conduct levels. A preparer who invests in learning enough about tax return preparation to pass a competency test and takes annual continuing education courses would demonstrate a commitment to return preparation as a profession. The preparer would be a vested partner in the tax system and would have more to lose if found to have engaged in misconduct, just like attorneys, CPAs, EAs, and other credentialed preparers. In addition, if tax return preparation is characterized as "practice" before the IRS under 31 U.S.C. § 330, the Office of Professional Responsibility would have oversight authority over preparers and could impose sanctions in cases of unethical conduct.[12]

One related issue requires attention. Under current law, every preparer must obtain a PTIN from the IRS to prepare tax returns, but the IRS does not have the authority to revoke the PTINs of preparers who engage in improper or illegal conduct. By contrast, the IRS may refuse to issue or revoke the electronic filer identification numbers (EFINs) of preparers who fail to pass suitability checks, fail subsequent reviews, or are prohibited by

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7 Dep't of the Treasury, General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals 244 (Mar. 2014), https://home.treasury.gov/system/files/131/General-Explanations-FY2015.pdf.

8 Dep't of the Treasury, FY 2019 Budget in Brief 7, https://home.treasury.gov/system/files/266/16.-IRS-FY-2019-BIB-FY2019.pdf.

9 Dep't of the Treasury, General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals 206 (Mar. 2024), https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf.

10 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26 (Apr. 2023), https://www.irs.gov/pub/irs-pdf/p3744.pdf.

11 IRS, Pub. 3744-B, 2024 Inflation Reduction Act Strategic Operating Plan Annual Update 4 (Apr. 2024), https://www.irs.gov/pub/irs-pdf/p3744b.pdf; IRS, Pub. 3744-A, 2024 Inflation Reduction Act Strategic Operating Plan Annual Update Supplement 15 (Apr. 2024), https://www.irs.gov/pub/irs-pdf/p3744a.pdf.

12 For a general overview of the rules of practice before the IRS, see IRS, Pub. 947, Practice Before the IRS and Power of Attorney (Feb. 2018), https://www.irs.gov/pub/irs-pdf/p947.pdf.

federal court injunction or another federal or state action from participating in IRS e-file.[13] Congress should allow PTIN revocation under similar circumstances and with the proper due process protections.[14]

In sum, IRS data and other compliance studies have consistently found that tax returns prepared by non-credentialed preparers are often inaccurate. Minimum standards would directly improve preparer competency levels and are likely to raise ethical norms. In addition, giving the IRS the authority to revoke the PTINs of substantially noncompliant preparers would provide the IRS with another tool to encourage compliant behavior in the profession.

RECOMMENDATIONS

- Amend 31 U.S.C. § 330 to authorize the Secretary to establish minimum standards for paid federal tax return preparers.[15]
- Amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.[16]

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13 IRS, Pub. 3112, IRS E-File Application & Participation (Oct. 2024), https://www.irs.gov/pub/irs-pdf/p3112.pdf; Rev. Proc. 2007-40, 2007-26 I.R.B. 1488.

14 *See, e.g.*, *Zirin Tax Co. Inc. v. United States*, No. 24-cv-01511, 2024 WL 2882609 (E.D.N.Y. June 7, 2024) (discussing the Fifth Amendment due process concerns caused by the government suspending the plaintiff's EFIN).

15 For legislative language generally consistent with this recommendation, see, *e.g.*, Tax Refund Protection Act, S. 1209 & H.R. 2702, 118th Cong. § 2 (2023).

16 For legislative language generally consistent with this recommendation, see, *e.g.*, System Transparency and Accountability for the IRS Act, H.R. 7341, 117th Cong. § 3(e)(2) (2022).

Legislative Recommendation #5

Extend the Time for Small Businesses to Make Subchapter S Elections

SUMMARY

- *Problem:* Individuals who incorporate their sole proprietorship or small business often miss the deadline for electing to be treated as an "S" corporation because the election deadline generally precedes the filing deadline for the corporation's first income tax return. Taxpayers routinely obtain permission to make late elections, but doing so imposes additional costs and burdens for the business and the IRS alike.

- *Solution:* Allow taxpayers to elect "S" status on their first timely filed corporation income tax return.

PRESENT LAW

IRC § 1362(b)(1) provides that a small business corporation (S corporation) may elect to be treated as a passthrough entity by making an election at any time during the preceding taxable year or at any time on or before the 15th day of the third month of the current taxable year. The prescribed form for making this election is IRS Form 2553, Election by a Small Business Corporation.

IRC § 6072(b) provides that income tax returns of S corporations made on a calendar-year basis must be filed on or before March 15 following the close of the calendar year, and income tax returns of S corporations made on a fiscal year basis must be filed on or before the 15th day of the third month following the close of the fiscal year.

REASONS FOR CHANGE

Many small business owners are not familiar with the rules governing S corporations, and they learn about the ramifications of S corporation status for the first time when they hire a tax professional to prepare their corporation's income tax return for its first year of operation. By that time, the deadline for electing S corporation status has passed. Failure to make a timely S corporation election can cause significant adverse tax consequences for businesses, such as incurring taxation at the corporate level and rendering shareholders ineligible to deduct operating losses on their individual income tax returns.[1] For context, roughly 5.9 million S corporation returns were filed in fiscal year (FY) 2023, which accounted for about 70 percent of all corporate returns.[2]

Taxpayers may seek permission from the IRS to make a late S corporation election under Revenue Procedure 2013-30 or through a private letter ruling (PLR) request. Under the revenue procedure, a corporation that failed to timely file Form 2553 may request relief by filing Form 2553 within three years and 75 days of the date the election is intended to be effective. In addition, the corporation must attach a statement explaining its

1 The value of an S corporation election increased for many taxpayers with the passage of the Tax Cuts and Jobs Act, which generally allows individual taxpayers to deduct 20 percent of domestic qualified business income from a passthrough business, including an S corporation, effectively reducing the individual income tax rate on such income by 20 percent. The deduction is subject to limitations that apply above certain income thresholds (beginning at $383,900 for joint filers and $191,950 for single returns, for tax years beginning in 2024). *See* IRC § 199A; Pub. L. No. 115-97, § 11011, 131 Stat. 2054, 2063 (2017); H.R. Rep. No. 115-466, at 205-224 (2017) (Conf. Rep.); Rev. Proc. 2023-34, § 3.27, 2023-48 I.R.B. 1287, https://www.irs.gov/irb/2023-48_IRB#REV-PROC-2023-34.

2 IRS, Pub. 55-B, IRS Data Book FY 2023 (Apr. 2024), https://www.irs.gov/pub/irs-pdf/p55b.pdf (Table 2, Number of Returns and Other Forms Filed, by Type, Fiscal Years 2022 and 2023).

"reasonable cause" for failing to timely file the election and the diligent actions it took to correct the mistake upon its discovery.

Finally, all shareholders must sign a statement affirming they have reported their income on all affected returns as if the S corporation election had been timely filed (*i.e.*, during the period between the date the S corporation election would have become effective if timely filed and the date the completed election form is filed). If an entity cannot comply with the revenue procedure, it may request relief through a PLR. In 2024, the IRS generally charged a user fee for a late-election relief PLR of $12,600.[3]

The S corporation election deadline burdens small businesses by requiring them to pay tax professionals and often IRS user fees to request permission to make a late election. It burdens shareholders because when the IRS rejects an S corporation return due to the absence of a timely election, the status of the corporation is affected, and that may cause changes on the shareholders' personal income tax returns. In addition, the deadline and relief procedures burden the IRS, which must allocate resources to process late-election requests.

Because small business owners often consider the S corporation election for the first time when they prepare their company's first income tax return, the burdens described above would be substantially alleviated if corporations could make an S corporation election on their first timely filed income tax return.

RECOMMENDATION

- Amend IRC § 1362(b)(1) to allow a small business corporation to elect to be treated as an S corporation by checking a box on its first timely filed IRS Form 1120-S, U.S. Income Tax Return for an S Corporation.[4]

3 User fees for PLRs are set forth in the first revenue procedure of each year. For 2024 user fees, see Rev. Proc. 2024-1, 2024-1 I.R.B. 1, App'x A, *Schedule of User Fees*. Treas. Reg. § 301.9100-3 prescribes the procedures and requirements for requesting late-election relief.

4 For legislative language generally consistent with this recommendation, see Tax Administration Simplification Act, S. 5316, 118th Cong. § 2 (2024), and H.R. 8864, 118th Cong. § 3 (2024); Protecting Taxpayers Act, S. 3278, 115th Cong. § 304 (2018).

Legislative Recommendation #6

Adjust Individual Estimated Tax Payment Deadlines to Occur Quarterly

SUMMARY

- *Problem:* Estimated tax installment payments for individual taxpayers are often referred to as "quarterly payments," but they are not due at even three-month intervals. Rather, they are spaced at three-month, two-month, three-month, and four-month intervals (April 15, June 15, September 15, and January 15). These uneven cutoff dates are confusing to taxpayers and can make it difficult for them to calculate their net income; few self-employed individuals and small businesses keep their books and records based on these dates.

- *Solution:* Revise the estimated tax payment deadlines so they fall at even quarterly intervals.

PRESENT LAW

IRC § 6654(c) generally requires individual taxpayers to make estimated tax payments in four installments due on April 15, June 15, September 15, and January 15. IRC § 6654(l) generally applies the same deadlines for estates and trusts.[1]

REASONS FOR CHANGE

Although estimated tax installment payments are often referred to as "quarterly payments," the payment dates do not align with calendar year quarters and are not evenly spaced at three-month intervals. These dates are not intuitive and create compliance burdens. Small business owners and self-employed individuals are particularly affected by the estimated tax rules because their incomes generally are not subject to wage withholding and they are far more likely to keep their books based on regular three-month quarters than the seemingly random intervals prescribed by IRC § 6654.

These uneven intervals make it more difficult for taxpayers to calculate net income and save appropriately to make estimated tax payments, and thus may reduce compliance.[2] They also cause confusion, as taxpayers struggle to remember the due dates. This confusion affects both traditionally self-employed workers and workers in the gig economy. Setting due dates to fall 15 days after the end of each calendar quarter would be more logical and make it easier for taxpayers to remember and comply with the due dates.

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1 IRC § 6654(j) generally requires non-resident aliens to make three estimated tax payments, which are due on June 15, September 15, and January 15. The June 15 date coincides with the due date for IRS Form 1040-NR, U.S. Nonresident Alien Income Tax Return, as provided in IRC § 6072(c). If this proposal is adopted, we recommend the second payment deadline be changed from September 15 to October 15 for consistency. IRC § 6655(c) generally requires corporate taxpayers to make estimated tax payments in four installments due on April 15, June 15, September 15, and December 15. Some of the benefits of establishing uniform quarterly deadlines would also apply to corporate taxpayers. However, we have not analyzed the implications of changing the corporate deadlines, so this recommendation is limited to the deadlines applicable to individual taxpayers.

2 Treasury Inspector General for Tax Administration, Ref. No. 2004-30-040, *While Progress Toward Earlier Intervention With Delinquent Taxpayers Has Been Made, Action Is Needed to Prevent Noncompliance With Estimated Tax Payment Requirements* 12 (2004).

RECOMMENDATION

- Amend IRC § 6654(c)(2) to set the estimated tax installment deadlines 15 days after the end of each calendar quarter (April 15, July 15, October 15, and January 15).[3]

3 For legislative language generally consistent with this recommendation, see, *e.g.*, Tax Administration Simplification Act, S. 5316, 118th Cong. § 3 (2024), and H.R. 8864, 118th Cong. § 4 (2024); Tax Deadline Simplification Act, H.R. 3708, 118th Cong. § 2 (2023) and H.R. 4214, 117th Cong. § 2 (2021).

Legislative Recommendation #7

Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act

SUMMARY

- *Problem:* U.S. taxpayers with foreign accounts and assets are subject to two sets of information reporting requirements – one for the IRS and one for the Financial Crimes Enforcement Network (FinCEN). Much of the information requested by these two Treasury Department bureaus is duplicative. Yet individuals must complete separate forms for each and are subject to significant penalties for failure to report accounts or assets on one or both forms, even when the individuals owe little or no tax.

- *Solution:* Reduce taxpayer burden and government costs to process and store the same information twice by eliminating duplicative reporting requirements for taxpayers with foreign accounts and assets.

PRESENT LAW

The Bank Secrecy Act, found primarily in Title 31 of the U.S. Code, requires U.S. citizens and residents to report foreign accounts to FinCEN when the combined value of those accounts exceeds $10,000 at any time during the calendar year.[1] Individuals comply with this requirement using FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR).

The Foreign Account Tax Compliance Act (FATCA) added § 6038D to the IRC (Title 26).[2] It requires U.S. citizens, residents, and certain non-residents to report foreign assets exceeding specified thresholds to the IRS. They must file IRS Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return to comply with this requirement. IRC § 6038D authorizes the IRS to issue regulations or other guidance to provide exceptions from FATCA reporting, including when the reporting would duplicate other disclosures.[3]

REASONS FOR CHANGE

Many U.S. taxpayers, particularly those abroad, face increased compliance burdens and costs because the FATCA and FBAR reporting requirements significantly overlap.[4] The duplicative reporting regime is also inefficient for the government, with the Government Accountability Office (GAO) reporting it "creates additional costs to the government to process and store the same or similar information twice, and enforce reporting compliance with both requirements."[5]

1 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c). The authority to enforce the Foreign Bank and Financial Accounts (FBAR) reporting requirements has been redelegated from FinCEN to the IRS. *See* 31 C.F.R. § 1010.810(g).

2 Pub. L. No. 111-147, Title V, Subtitle A, § 511(a), 124 Stat. 71, 109-110 (2010).

3 The IRS has provided exceptions for assets reported on certain IRS international information returns and for assets held in the U.S. territories by *bona fide* residents of the territories. Treas. Reg. § 1.6038D-7(a)(1), (c).

4 For a comparison of the requirements, see IRS, Comparison of Form 8938 and FBAR Requirements, https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements (last updated Sept. 18, 2024).

5 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 42-43 (2019), https://www.gao.gov/products/gao-19-180.

We believe two bureaus within the same cabinet department (Treasury) should harmonize their information collection procedures to reduce the significant burdens the current reporting regime creates for taxpayers. At the same time, we recognize there are complexities that can only be addressed through legislation. FATCA reporting and FBAR reporting serve different purposes, and while there is significant overlap between the two, they are not identical with respect to whom they apply, which assets must be reported, and the information collected.[6] We also recognize the challenges the IRS faces when working with Title 31 requirements and FinCEN guidance that differ from the Title 26 rules. We concur with the GAO's assessment that a legislative change to the FATCA and FBAR statutes is necessary to eliminate overlapping reporting requirements and the collection of duplicative information, while still ensuring each agency retains access to the information it needs.[7]

The National Taxpayer Advocate recommends Congress amend Titles 26 and 31 to eliminate FATCA reporting when a foreign financial account is correctly reported on an FBAR. The National Taxpayer Advocate also recommends Congress provide a limited exception from FATCA reporting for financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident (commonly known as a "same-country" exception).[8] If adopted, these recommendations would reduce compliance burdens for U.S. taxpayers who currently must navigate the complex and duplicative reporting regime themselves or pay higher fees to tax professionals to do it for them, and could reduce the government resources required to process and store the same information twice.

RECOMMENDATIONS

- Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 when a foreign financial account is correctly reported on an FBAR, while ensuring each agency's continued access to information.[9]
- Amend IRC § 6038D to exclude accounts maintained by a financial institution organized under the laws of the country of which a U.S. person is a *bona fide* resident from the specified foreign financial assets required to be reported on IRS Form 8938.[10]
- Authorize the Secretary of the Treasury to issue regulations under Titles 26 and 31 to harmonize the FATCA and FBAR reporting requirements and direct the Secretary to issue such regulations within one calendar year from the effective date of the legislation.

6 While FATCA reporting is focused on identifying income from foreign sources and curbing taxpayer noncompliance, FBAR reporting is focused on identifying money laundering and other financial crimes.

7 GAO, GAO-19-180, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* 25-26 (2019), https://www.gao.gov/products/gao-19-180.

8 We understand that FATCA reporting burdens have caused some foreign financial institutions to decline to do business with U.S. expatriates, making it difficult for U.S. citizens to open bank accounts in some countries. An exception for *bona fide* residents of a foreign country would reduce those burdens without substantially undermining the purpose of FATCA, because individuals who open bank accounts in the country in which they reside are more likely to need the account for legitimate purposes and less likely to be engaged in tax evasion than individuals who open accounts in countries with which they have little connection. For additional discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 353-363 (Legislative Recommendation: *Foreign Account Reporting: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in Which a U.S. Taxpayer is a* Bona Fide *Resident*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_LR_05_Foreign-Acct-Reporting.pdf.

9 For legislative language taking a different approach to harmonization, see Tax Simplification for Americans Abroad Act, H.R. 5432, 118th Cong. § 4 (2023), which would amend 31 U.S.C. § 5314 to provide that a taxpayer could satisfy FBAR requirements by attaching information required under IRC § 6038D to the annual tax return.

10 For legislative language generally consistent with this recommendation, see, *e.g.*, Overseas Americans Financial Access Act, H.R. 5799, 117th Cong. § 3 (2021).

Legislative Recommendation #8

Authorize the Use of Volunteer Income Tax Assistance Grant Funding to Assist Taxpayers With Applications for Individual Taxpayer Identification Numbers

SUMMARY

- *Problem:* The tax code requires millions of individuals who are not eligible for Social Security numbers (SSNs) to file tax returns. To process returns from these individuals, the IRS generally requires them to obtain Individual Taxpayer Identification Numbers (ITINs). However, the process for obtaining ITINs is complex and confusing, especially for non-English speaking individuals who cannot afford professional tax advice. Certifying Acceptance Agents (CAAs) can help.
- *Solution:* Authorize Volunteer Income Tax Assistance (VITA) programs to use federal grant funds to provide CAA services.

PRESENT LAW

IRC § 6109(a)(1) authorizes the Secretary to require taxpayers to include a Taxpayer Identification Number (TIN) on tax returns and other documents.[1] Most taxpayers use SSNs for this purpose, but taxpayers who are not eligible for SSNs generally must request an ITIN from the IRS.[2]

In 1996, the IRS published guidance allowing CAAs to assist taxpayers with ITIN applications and to authenticate identification documents.[3] In 2015, Congress codified the IRS's use of "community-based certified acceptance agents" and directed the IRS to develop strategies to expand the CAA program and encourage participation in it.[4]

IRC § 7526A, enacted as part of the Taxpayer First Act, authorizes the IRS to award federal grants for the development, expansion, or continuation of VITA programs.[5] VITA programs offer free tax preparation services to eligible taxpayers.[6] IRS community partner organizations operate VITA sites and staff them with IRS-certified volunteers.[7] IRC § 7526A(b) enumerates the permissible uses of VITA grant funds, but it does not specifically enumerate costs associated with providing CAA services as a permissible use.

1 *See* Treas. Reg. § 301.6109-1(b).
2 Treas. Reg. § 301.6109-1(a)(1)(ii)(B). Taxpayers apply for an ITIN using Form W-7, Application for IRS Individual Taxpayer Identification Number (Aug. 2019), https://www.irs.gov/pub/irs-pdf/fw7.pdf.
3 *See* Rev. Proc. 96-52, 1996-2 C.B. 372, *superseded by* Rev. Proc. 2006-10, 2006-1 C.B. 293.
4 Consolidated Appropriations Act, 2016 (commonly referred to as the Protecting Americans from Tax Hikes Act of 2015), Pub. L. No. 114-113, Div. Q, Title IV, § 203, 129 Stat. 2242, 3078 (2015).
5 Pub. L. No. 116-25, § 1401, 133 Stat. 981, 993 (2019).
6 IRS, Free Tax Return Preparation for Qualifying Taxpayers, https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers (last updated Oct. 17, 2024).
7 *Id.*

REASONS FOR CHANGE

The need for ITINs is extensive. During 2022, the IRS received about 3.8 million individual tax returns that included an ITIN.[8] A significant but unknown number of additional individuals do not file required returns each year because they are unable to navigate the ITIN application process.

To protect against fraud, the IRS understandably applies strict rules to the verification of identification documents supporting ITIN applications.[9] However, the IRS's requirements make the ITIN application process difficult. First, the ITIN application itself can be challenging to fill out, particularly for non-English speaking individuals. Second, an individual who prepares and submits an ITIN application without assistance must provide original identity documents with the application, which may include passports, birth certificates, driver's licenses, and visas. The IRS will return these documents after verifying them. The IRS website says the agency is currently taking seven to 11 weeks to process ITIN applications.[10] Many people are uncomfortable mailing their identity documents to the IRS, not having the documents while the IRS reviews them, and risking the IRS will lose the documents.

Taxpayers can avoid mailing their identity documents to the IRS if they obtain assistance with their ITIN application at an IRS Taxpayer Assistance Center (TAC) or from a CAA. Both TAC employees and CAAs are authorized to authenticate certain identifying documents.

The CAA program is particularly useful for three reasons. First, the IRS approves ITIN applications prepared with CAA assistance at higher rates than applications prepared with either TAC assistance or sent directly by ITIN applicants.[11] CAAs are certified in forensic document training and must undergo regular IRS compliance reviews.[12] In addition, if the IRS needs more information about a CAA-assisted application, the IRS can contact the CAA directly, which can lead to a more efficient resolution of issues.

Second, as Congress emphasized in its 2015 legislation, it is important for the CAA program to be "community-based." Because many ITIN applicants are immigrants to the United States, CAAs often need to be able to work in a foreign language or understand the unique features of identification documents from a taxpayer's home country or region within that country.[13]

While some CAAs work through nonprofit organizations, many do not, with some CAAs reportedly charging thousands of dollars for ITIN application assistance.[14] VITA programs could provide CAA services to a broader swath of taxpayers at no cost.

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8 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File Table (IRTF), IRTF_F1040 Table, IRTF_TIN_INFO Table TYs 2019-2022 (through June 27, 2024).

9 For a discussion on ITIN processing, see National Taxpayer Advocate 2024 Annual Report to Congress, https://www.taxpayeradvocate.irs.gov/AnnualReport2024.

10 IRS, ITIN Expiration Frequently Asked Questions, https://www.irs.gov/individuals/itin-expiration-faqs (last updated Aug. 19, 2024).

11 For a discussion on ITIN processing, see National Taxpayer Advocate 2024 Annual Report to Congress, https://www.taxpayeradvocate.irs.gov/AnnualReport2024.

12 *See* IRS, ITIN Acceptance Agent Program Changes, https://www.irs.gov/individuals/itin-acceptance-agent-program-changes (last updated Sept. 6, 2024).

13 The IRS Advisory Council has recommended expansion of CAAs at VITA sites. *See* IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 165-166 (Nov. 2023), https://www.irs.gov/pub/irs-pdf/p5316.pdf; *see also* letter from Coalition for Immigrant Taxpayer Experience, to Danny Werfel, Comm'r, Internal Revenue (Mar. 4, 2024) (on file with TAS) (agreeing with the IRS Advisory Council's recommendations to expand CAA services at VITA sites).

14 Discussion during ITIN unit site visit (Sept. 10, 2024).

Third, VITA sites principally prepare tax returns, and taxpayers generally must submit ITIN applications in conjunction with a tax return. Thus, awarding funding for VITA sites to prepare ITIN applications along with tax returns would provide "one-stop shopping" for these individuals.[15]

The IRS office that manages VITA – Stakeholder Partnerships, Education and Communication – focuses on developing and supporting partnerships with local organizations that have pre-established relationships and successful track records assisting people in their communities.[16] Expanding the availability of CAAs at VITA sites would provide ITIN taxpayers with access to trusted partners in their communities who can assist them in preparing both ITIN applications and tax returns, increasing the accuracy of these filings at no cost to taxpayers.

RECOMMENDATION

- Amend IRC § 7526A(b) to add the ordinary and necessary costs of providing CAA services as a permissible use of VITA grant funds.

15 Most ITIN taxpayers would have qualified for return preparation assistance from VITA based on income limits in 2023, yet relatively few such taxpayers used VITA for that purpose. Among ITIN taxpayers who used a tax return preparer, 90.3 percent relied on a non-credentialed preparer. IRS, CDW, IRTF, Individual Master File, Return Review Program Preparer Tax Identification Number Table, TYs 2019-2023, (through Aug. 22, 2024). If these taxpayers could obtain return preparation assistance at the same time they apply for ITINs, they would be more likely to use VITA programs for return preparation, saving themselves tax preparation fees and likely filing more accurate returns. *See* IRS, Pub. 5162, Compliance Estimates for the EITC Claimed on 2006-2008 Returns 26 (Aug. 2014), https://www.irs.gov/pub/irs-soi/EITCComplianceStudyTY2006-2008.pdf (finding EITC overclaims on 51.5 percent of returns prepared by unenrolled tax return preparers as compared with 23 percent of returns prepared at VITA, Tax Counseling for the Elderly, or IRS locations. These percentages represent the average between the IRS lower bound and upper bound estimates.).

16 *See* Internal Revenue Manual 22.30.1.1.1, Background (Sept. 4, 2020), https://www.irs.gov/irm/part22/irm_22-030-001.