June 7, 2019

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
Ben Franklin Station
Washington, D.C. 20044


Dear Commissioner Rettig:

The Pennsylvania Institute of Certified Public Accountants (PICPA) thanks you for the opportunity to once again provide IRS priority guidance recommendations. The 2019-2020 guidance recommendations we provide herein are a partial reflection of the impact the Tax Cuts and Jobs Act (TCJA) has had on IRS operations and organizational priorities.

The impact the TCJA has had on the IRS, and its 2018-2019 priorities, has, by all accounts, necessitated the postponement of many IRS projects and initiatives. Therefore, you may notice some of the 2019-2020 priority guidance recommendations were first discussed in the 2018-2019 priority guidance recommendations.

PICPA’s recommendations do not completely reflect the American Institute of Certified Public Accountants’ (AICPA’s) more detailed recommendation list. Rather, the PICPA’s recommendations reflect a subset of items we deemed particularly important.

We do, however, endorse and support the entire list of 2018-2019 AICPA guidance recommendations, including those that have been asserted but not yet completed.

The AICPA has previously encouraged the Department of the Treasury and the IRS to continue pursuing tax simplification. We continue to support AICPA in this over-arching priority and urge you to always consider tax simplification.
The following are general simplification recommendations that were included in AICPA’s 2018-2019 guidance:

- Use the simplest approach to accomplish a policy goal
- Provide safe harbor alternatives
- Offer clear and consistent definitions
- Use horizontal drafting (a rule placed in one Internal Revenue Code (Code) section should apply in all other Code sections) to the greatest extent possible
- Build on existing business and industry standard record-keeping practices
- Provide a balance between simple general rules and more complex detailed rules
- Match a rule’s complexity to the sophistication of the targeted taxpayers

These recommendations remain as pertinent today as they did prior to TCJA’s enactment. It is worth considering that when we discuss the Internal Revenue Code, tax reform does not always equate to tax simplification.

The TCJA initiated some changes that could be considered tax simplification. However, reducing some tax form complexity should not discount the complications taxpayers continue to face in filing new forms and understanding tax law changes.

**Purpose**

In addition to the list of unresolved guidance recommendations from the prior year, PICPA’s Federal Taxation Committee is concerned with some new developments as well. The following recommendations were recently made by the AICPA and the AICPA Executive Council, and they are supported by the PICPA and its Federal Taxation Committee:

- Timeliness of IRS disaster relief assistance
- GAO report on fiscal state of the nation
- Establishment of an IRS practitioners service division
- Digital economy outreach

Furthermore, the PICPA and its Federal Taxation Committee supports the following specific recommendations:

- Practitioner educational outreach for better data security and privacy outcomes
- Clarity regarding Section 6676, Penalty Abatement for Disallowed Refund Claims
- Improvements to the payroll tax e-filing system and its present registration system
- Section 280E review for creating increased clarity regarding penalty application
- Eliminate private debt collectors and the passport revocation process
**Timeliness of IRS Disaster Relief Assistance**

The importance of expedited disaster relief for victims of natural and man-made disasters cannot be overstated. Disaster victims count on state and federal governments to make appropriate and timely disaster declarations to minimize the emotional and financial hardship of such events.

The IRS is often a key component in disaster relief. Tax practitioners and taxpayers are often directly impacted by an inability to extend, file, pay, or discuss urgent tax matters. These delays can lead to missed deadlines and penalty imposition.

State disaster declarations often precede federal disaster declarations. This timing difference can be considerable, as the federal government has more required processes before approving such declarations when compared to state governments.

If the IRS can be given statutory authority that, upon the issuance of a state disaster declaration, it will extend filing deadlines and waive penalties (as two examples), then any delay in a federal disaster declaration will be mitigated.

**GAO Report on Fiscal State of the Nation**

Understanding the fiscal health of our nation is an increasingly difficult job for the citizenry and its elected officials. Competing narratives vie for attention in the public discourse, and our nation’s complete financial picture becomes obscured.

Federal policy makers rely heavily on federal budgets and projected revenues and expenditures. The PICPA supports the effort to mandate a Comptroller General Report, given to a joint session of the House and Senate budget committees annually, regarding the GAO’s audited federal financial statements.

The public dissemination of this report annually would improve taxpayer awareness of our national finances. Annually audited financial statements more fully detail the true financial condition of the federal government, and can help demonstrate the actual impact of certain fiscal policy decisions.

**Establishment of an IRS Practitioners Service Division**

The PICPA agrees with the various IRS stakeholders who support the consolidation of the many tax-practitioner-impacting programs into a centralized practitioner services division.

The IRS’s Integrated Modernization Business Plan specifically mentions a strategic goal of “collaborating with external partners proactively to improve tax administration.” This collaboration must address stakeholders’ needs prior to the initiation of any plan. The specific needs of each stakeholder are disparate, but understanding the key concerns of each group will aid in the creation of an improved, efficient, and fairer system of tax administration.
**Digital Economy Outreach**

The creation of a digital economy and the accompanying dialogue concerning growing fiscal inequality and the opportunities to fully address these issues are becoming increasingly mainstream.

The concerns arising from the massive growth in the digital economy are no longer the rhetoric of fringe political groups.

On May 31, 2019 the Organization for Economic Cooperation and Development (OECD), of which the United States is a member, authorized a “road map for resolving the tax challenges arising from a digital economy, with the goal of creating a year 2020 long-term solution.” The cornerstone of this road map is the probable creation of a digital services tax.

The IRS can, and should, take the lead in sharing information and educating the public about various OECD proposals, including the digital services tax, that have been approved and ratified by the United States.

The timeline for resolution and implementation of a digital services tax is about 18 months (year end 2020). The taxpaying public, including those multinational businesses that will be affected, are largely unaware of the potential impact and tax ramifications.

The IRS can achieve the dual goals of stakeholder service and image enhancement by taking the lead in creating a digital economy communications hub.

**Practitioner Educational Outreach for Better Data Security and Privacy Outcomes**

The IRS can expand its outreach efforts directly to taxpayers and tax practitioners by providing enhanced opportunities for technical assistance.

Threats to practitioners’ operating systems and data integrity are increasing. The IRS can provide more web-based opportunities to offer practitioners much needed support.

The IRS seems to toggle between a bad-cop, good-cop strategy when it comes to practitioner data security. Threatening, cajoling, and berating tax practitioners to improve their security processes, while simultaneously sending the message of “We are a resource” for this problem, sends a mixed and ineffective message.

The IRS has been challenged with its own security breaches, as have many Fortune 500 companies around the world.

The PICPA believes a consistent, positive, and supportive message, including providing the latest resources to the entire professional tax preparation community, is the best approach to becoming a better resource for practitioner data security and privacy.
Clarity Regarding Section 6676 Penalty Abatement for Disallowed Refund Claims

Section 6676 of the Code pertains to a 20% penalty asserted against taxpayers for any claim of a refund or credit for which the taxpayer is not entitled. The 20% penalty is calculated as an amount equal to 20% of the disallowed refund claim amount.

The IRS need not show any fault by the taxpayer to assess this penalty. A lesser “reasonable basis” standard was replaced by an undefined “reasonable cause” standard for refund claims filed after Dec. 18, 2015.

This penalty is immediately assessable and the IRS can begin the lien filing process once a 30-day notice is issued and the demand for payment is made, but no payment is received. Given such a fast timeline, no court could have the opportunity to adjudicate the matter.

This penalty is most often challenged in a tax refund court, and this requires paying the penalty first and then making a claim for a refund. Based on recent increased litigation, this penalty assessment appears to be on the rise.

Furthermore, a November 2018 Large Business and International directive advised personnel to consider the application of Section 6676 penalties pertaining to erroneous Section 199 refund claims. Finally, other IRS correspondence indicates this penalty assessment is increasing.

We advise the IRS to monitor the frivolous application of this penalty, and consider revising the language in Section 6676 to accurately and completely define the “reasonable cause” standard.

Improvements to the Payroll Tax E-filing System and Its Present Registration System

To continue to improve on the IRS’s stated goals of advancing the growth of electronic filing across all tax platforms, the IRS should consider improvements to the system for the e-filing of federal payroll tax forms.

All payroll tax e-filers do not use EFTPS. The filing of payroll taxes and quarterly payroll tax returns is often more easily accomplished by filing tax forms directly through a software provider (such as QuickBooks).

Unlike the process for automatically enrolling in paying federal payroll taxes, the process for filing payroll tax forms can be ineffective and cumbersome. It undermines the goal of 100% payroll tax return e-filing.

Revisions to this filing system, including making a change of passwords easier and the filing of payroll tax returns more seamless, will bring about the desired increases in e-filing compliance rates.

A better authentication process for taxpayers, other than the present mail system, is needed to eliminate remaining obstacles to obtain 100% e-filed payroll tax forms.
Section 280E Review for Creating Increased Clarity Regarding Penalty Application

Language concerning the applicability for accuracy-related penalties should be reviewed. A more consistent standard should be applied in tax court cases involving Section 280E operators.

Recent tax court developments saw two similar cases with different assessed penalty outcomes. One cannabis business owner was assessed penalties, and one cannabis business owner was not assessed penalties. The inconsistent application of penalties creates uncertainty and undermines effective tax administration.

Furthermore, the section itself induces schemes that cannabis operators contrive to seek expense deductibility.

In addition to providing better understanding concerning the applicability of accuracy-related penalty assessment, the IRS could seek to improve the wording of Section 280E and remove language that creates confusion and promotes unwanted tax filing behavior.

Eliminate Private Debt Collectors and the Passport Revocation Process

The PICPA believes that private debt collectors and passport revocation are two recent and inherently unfair tax code provisions.

Private debt collection increasingly appears to disproportionately affect the poor and lower income individuals. It is unclear that the IRS has the ability to adequately monitor the activity of contracted debt collection firms.

The decision to outsource collections further undermines the central role the IRS has in maintaining the integrity of tax administration.

Additionally, we believe passport revocation serves no useful purpose since our country has extradition treaties with most countries. Eliminating foreign travel, especially among those who need to travel for work or family emergencies, creates additional unnecessary hardships.

We appreciate this opportunity to present our comments. If you would like to discuss further, please do not hesitate to contact the PICPA’s Government Affairs office at (717) 232-1821.

Sincerely,

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Chair, PICPA Federal Taxation Committee

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