

September 3, 2024

The Honorable Danny Werfel
Commissioner of Internal Revenue
Internal Revenue Service
CC:PA:01:PR (REG-117542-22)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044
pra.comments@irs.gov

RE: IRS REG-117542-22 Notice of Proposed Rulemaking Regarding Advance Notice of Third-Party Contacts

Dear Commissioner Werfel:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. The TXCPA Federal Tax Policy Committee appreciates the opportunity to comment on proposed regulations on the notice of proposed rulemaking regarding advance notice of third-party contacts.

When Congress enacted the *Taxpayer First Act* in 2019, it amended Section 7602 and mandated that the Internal Revenue Service (IRS) give 45 days' advance notice before it contacts a third party with respect to the determination or collection of taxes. Prior to the amendment, the statute did not include an explicit time frame. Instead, the statute required that the IRS not contact third parties unless "reasonable notice" was provided to the taxpayer. Paragraph (3) of the statute has always provided explicit exceptions to the notice requirement.

Treasury recently issued proposed regulations giving the IRS the discretion to reduce the 45-day notification period. Some of the criteria in the regulations are consistent with the three exceptions listed in the statute, but some are not.

We agree that the IRS should reasonably be allowed to have a shorter notice period where there are indications of potential fraud, imminent threat of flight or unusual circumstances that jeopardize the collection or assessment of tax. Those circumstances are consistent with the exceptions in the statute at paragraph (3)(b) and (c) providing that notification is not required if the IRS "determines for good cause shown that such notice would jeopardize collection of any tax, or such notice may involve reprisal against any person" or if there is "any pending criminal investigation." We also have no objections to the shorter notification period described in Proposed Section 301.7602-2(d)(5)(i) and (ii) with respect to the IRS' fuel compliance program and in the case of nonjudicial redemption investigations.

However, we object to Proposed Section 301.7602-2(d)(5)(iii) through (v) giving the IRS the ability to shorten the statutory notification period when there is less than a year left on the statute of limitations at the time that the IRS determines it needs to contact a third party. Imminent statute situations often occur because of decisions made by the IRS regarding resources or in some cases due to lack of diligence by IRS employees. Imminent statutes never occur because of any action or inaction on the part of the taxpayer.

The statutes of limitations on tax assessment and collection were established by Congress to set time limits for the IRS to review, analyze and resolve tax-related issues. Generally, the IRS has three years from the later of the due date or the date of filing to assess additional taxes and 10 years from the date of assessment to collect taxes owed. These limitations were established by Congress to ensure fairness and predictability in tax matters, and already include extensions of the statutes of limitations under specified circumstances. An exception to the 45-day notice period based on a "short statute" is inconsistent with the purpose of the statute of limitations and with a taxpayer's right to finality in tax matters. The shortened period may also lead to forced settlements or coerced agreements to extend the statute of limitations.

Coercive Effect of a 10-Day Notice for Third-Party Contacts

Taxpayers could easily be intimidated by the threat of the IRS contacting third parties with short notice and with little opportunity to negotiate a settlement with the IRS or to explain to vendors, employees, partners, financial institutions, family members and others why their taxes are under scrutiny. A taxpayer might be coerced into an unfavorable settlement or to an extension of the limitations period for assessments or collections to avoid embarrassment or potentially irreparable reputational damage. The fact that the average mail delivery time is three-to-four days further limits taxpayer rights because by the time taxpayers receive a notice with a 10-day notification period, they may only have a few days to coordinate a response and potentially provide the information the IRS seeks.

Taxpayer Right to Finality

Congress provided Code Sections 6501(a) and 6502 to set time limits for assessing and collecting taxes. These limits provide taxpayers with closure and finality with respect to their tax responsibilities. The *Taxpayer Bill of Rights* gives taxpayers the Right to Finality, "to know the maximum amount of time they have to challenge the IRS' position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit." The right to finality is essential to help maintain taxpayer confidence in the fairness of our tax system. Taxpayers are entitled to timely closure of tax issues and to avoid the feeling of being pursued indefinitely by the IRS. The period of assessments is sacrosanct. It should be respected unless there is some compelling reason to disregard it. Shortening the notice period merely for statute of limitation purposes disregards the purpose of the statute of limitations.

Taxpayers Should Not Be Disadvantaged by Possible IRS Delays

The IRS generally has adequate time to assess and collect taxes within the statutory periods provided by Congress. A failure to complete assessment and collection activities within the time Congress provided is not a reason to shorten the notice period.

IRS examination and collection activities, while necessary, are burdensome and often traumatizing to taxpayers. Having an agent or revenue officer tell friends, colleagues, employers and others about it can cause serious personal and business damage. Congress provided the 45-day notice period to give taxpayers a limited opportunity to mitigate that damage. That period should only be reduced in unusual circumstances (and arguably only in the three instances expressly provided by Section 7602(c)(3)). The fact that the IRS may in some cases be unable to obtain the relevant information from the taxpayer in the time Congress provided is not an acceptable reason to bypass the 45-day period, especially in cases where delays result from government inertia.

One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee also has the discretion to comment on reporting and disclosure requirements under Title 31 of the U.S. Code of Federal Regulations. The committee has been authorized by the TXCPA Leadership Council to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Leadership Council or Board of Directors and, therefore, should not be construed as representing the views or policies of the TXCPA.

We would be pleased to further discuss this issue with you or your staff. Please feel free to contact me at 214-276-5001 or jsmith@dallascpas.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pw Wyatt@tx.cpa.

Sincerely,



James A. Smith, CPA, CGMA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by William Wilson, CPA, and Leo Unzeitig, J.D., CPA.

cc: Heather Maloy, Chief Taxpayer Compliance Officer, Internal Revenue Service
Lily Batchelder, Asst Treasury Secretary for Tax Policy, Department of the Treasury
Erin M. Collins, National Taxpayer Advocate