



February 24, 2022

The Honorable Lily Batchelder  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**RE: Concerns Regarding Schedules K-2 and K-3 Reporting**

Dear Assistant Secretary Batchelder and Commissioner Rettig:

**The AICPA and state CPA societies across the country call on the Treasury Department and the IRS to delay implementation of the Schedules K-2 and K-3 to 2023 (the 2022 tax year filing season) and to suspend any assessment of penalties against Partnerships or S Corporations for failing to file or failing to timely provide Schedules K-2 and K-3 for the 2021 tax year.**

The Coronavirus Disease 2019 pandemic (commonly known as “Coronavirus”) has created unforeseen difficulties for the Internal Revenue Service (IRS), taxpayers, and tax professionals alike. As the 2021 tax year filing season begins under similar conditions as previous years due to the Coronavirus pandemic, the Department of the Treasury (“Treasury”) and the IRS “are under no illusions that it’s going to go smoothly.”<sup>1</sup>

A streamlined and expanded reporting tool of complex matters through fiscally transparent entities was undeniably necessary and we appreciate the importance of IRS’s foreign passthrough reporting requirements. We also acknowledge the substantial efforts of Treasury and the IRS in developing redesigned international tax reporting passthrough forms of Schedules K-2 and K-3 (the “Schedules”), releasing final instructions, and providing certain transition relief for 2021 tax years.<sup>2</sup> Filing complete and accurate returns are essential elements to a well-functioning and voluntary tax system.

However, recent revisions pertaining to the Schedules’ filing instructions<sup>3</sup> raise additional questions,<sup>4</sup> perpetuating futility in filing a complete and accurate return and the goal of standardized international reporting. Further modifying the applicable scope of the new Schedules

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<sup>1</sup>Jonathan Curry, “[Treasury, IRS Prepare for the Worst as Filing Season Looms](#),” 2022 Tax Notes 7-1 (Jan. 11, 2022). See also, e.g., Jeff Stein, “[Treasury Warns of ‘Enormous Challenges’ this Tax Filing Season that Could Delay Refunds](#),” The Washington Post (Jan. 10, 2022); 2021 [National Taxpayer Advocate Annual Report to Congress](#) (Jan. 12, 2022).

<sup>2</sup> See [Notice 2021-39](#) (limited penalty relief), [IR-2022-38](#) (Feb. 16, 2022), [Schedule K-2 and K-3 Frequently Asked Questions](#) (FAQs) (rev. Feb. 16, 2022).

<sup>3</sup> See [Schedule K-2 and K-3 Frequently Asked Questions](#) (FAQs) (rev. Feb. 16, 2022) and [IR-2022-38](#).

<sup>4</sup> For example, the “know or reason to know” standard regarding indirect partners included in FAQ 15 is inconsistent under current statutes and guidance (e.g., section 6031). Additionally, FAQ 15 lacks a bright-line standard by conflating direct and indirect partner reporting obligations.

amidst tax filing season leaves the tax system confused and in disarray. The AICPA previously recommended that due to implementation difficulties, such as software development and the Coronavirus pandemic impacting the entirety of the 2020 filing season, a delay until 2023 was necessary.<sup>5</sup>

We continue to urge the IRS to delay implementation of the Schedules K-2 and K-3 to 2023 (the 2022 tax year filing season). If the IRS is not prepared to electronically accept the new Schedules in time for the initial filing dates of these forms, the filing requirement should apply for tax years beginning after the date the IRS and software providers are able to properly provide and process the new schedules in an electronic format. Further, we recommend no assessment of penalties against Partnerships or S Corporations for failing to file or failing to timely provide Schedules K-2 and K-3 for the 2021 tax year.<sup>6</sup>

Delay is essential until e-filings can be accepted and uncertainty regarding taxpayer filing obligations is resolved. Currently, the IRS is unable to accept electronically filed returns containing the Schedules K-2 or K-3 via the Modernized e-File (MeF) system for partnership returns until March 20, 2022, and for S corporations returns until mid-June. The lack of a timely available MeF filing option for these forms in electronic format will cause unnecessary hardship to all affected parties.

These tentatively planned dates to accept e-filings are past the original due dates for all passthrough returns, which – given the continual changes regarding applicable filing obligations and MeF system unavailability – will presumptively necessitate filing extensions for significantly more partnership, S corporation, and owners’ individual income tax returns than in prior years. A major consequence of not having an MeF option is that the IRS will be tasked with processing unnecessary extensions in addition to the paper-filed returns for those entities who choose not to extend. Software providers also cannot offer sufficient solutions until the MeF system is complete.

The 2022 filing season has commenced and the IRS as well as taxpayers are unclear as to *who is required to file the Schedules*, nor can taxpayers properly file and the IRS process these Schedules. These threshold issues nearly preclude complete and accurate returns for the 2022 filing season on which our tax system relies and on which the Schedules are predicated in the goal to standardize international tax reporting.

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<sup>5</sup> See AICPA comment letter, “[Comments on Proposed International Changes to Form 1065, Schedule K-2, and Schedule K-3](#)” (Sept. 14, 2020).

<sup>6</sup> [Notice 2021-39](#) provided penalty relief for good faith compliance efforts. However, this relief is insufficient given the 2022 updates to the final instructions.

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Sincerely,

American Institute of CPAs (AICPA) and the undersigned state CPA societies

|                                    |                                    |                                    |
|------------------------------------|------------------------------------|------------------------------------|
| Alabama Society of CPAs            | Maryland Association of CPAs       | Ohio Society of CPAs               |
| Alaska Society of CPAs             | Massachusetts Society of CPAs      | Oklahoma Society of CPAs           |
| Arizona Society of CPAs            | Michigan Association of CPAs       | Oregon Society of CPAs             |
| Arkansas Society of CPAs           | Minnesota Society of CPAs          | Pennsylvania Institute of CPAs     |
| California Society of CPAs         | Mississippi Society of CPAs        | Rhode Island Society of CPAs       |
| Colorado Society of CPAs           | Missouri Society of CPAs           | South Carolina Association of CPAs |
| Connecticut Society of CPAs        | Montana Society of CPAs            | South Dakota CPA Society           |
| Delaware Society of CPAs           | Nebraska Society of CPAs           | Tennessee Society of CPAs          |
| Greater Washington Society of CPAs | Nevada Society of CPAs             | Texas Society of CPAs              |
| Florida Institute of CPAs          | New Hampshire Society of CPAs      | Utah Association of CPAs           |
| Georgia Society of CPAs            | New Jersey Society of CPAs         | Vermont Society of CPAs            |
| Guam Society of CPAs               | New Mexico Society of CPAs         | Virginia Society of CPAs           |
| Hawaii Society of CPAs             | New York State Society of CPAs     | Washington Society of CPAs         |
| Idaho Society of CPAs              | North Carolina Association of CPAs | West Virginia Society of CPAs      |
| Illinois CPA Society               | North Dakota CPA Society           | Wisconsin Institute of CPAs        |
| Indiana CPA Society                |                                    | Wyoming Society of CPAs            |
| Iowa Society of CPAs               |                                    |                                    |
| Kansas Society of CPAs             |                                    |                                    |
| Kentucky Society of CPAs           |                                    |                                    |
| Society of Louisiana CPAs          |                                    |                                    |
| Maine Society of CPAs              |                                    |                                    |