

AMERICAN PAYROLL ASSOCIATION

November 25, 2019

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

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

Re: Recommendations on the implementation of Public Law 116-25, the Taxpayer First Act of 2019

Dear Secretary Mnuchin and Commissioner Rettig:

The Taxpayer First Act of 2019 (Pub. L. 116-25) requires the Department of the Treasury and Internal Revenue Service to provide Congress with a written plan to redesign the organization of the IRS by September 30, 2020. As you consider this comprehensive undertaking, the American Payroll Association (APA) offers a recommendation regarding organization design to “streamline the structure of the agency including minimizing the duplication of services and responsibilities within the agency” (Title I, Subtitle D, Section 1302(a)(3)). APA recommends restructuring to create a Payroll and Employment Tax Division.

ABOUT APA

APA is a nonprofit association serving the interests of approximately 21,000 payroll professionals nationwide. APA’s primary mission is to educate its members and the payroll industry about the best practices associated with paying America’s workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages, tax withholding, and tax remittance for their employers.

RECOMMENDATION TO CREATE A PAYROLL AND EMPLOYMENT TAX DIVISION

APA recommends the establishment of a Payroll and Employment Tax Division. With 69.8% of federal tax revenue collected through payroll and employment taxes (2018 IRS Data Book), focusing IRS resources to respond to payroll professionals and their employers makes sense.

Focus of the Current Infrastructure Ineffective

The current infrastructure is not intuitive for payroll departments and employers. When payroll professionals seek assistance from the IRS, they do not know which division to contact.

The IRS's current infrastructure includes divisions for large businesses and international companies, small businesses and self-employed, tax exempt and government entities, and wage and investment. Each of these business-focused divisions address some unique tax issues, but significant redundancies also scatter payroll and employment tax considerations.

In general, payroll professionals and employers do not contact the IRS based on employer size or business type, but by the tax issue they need resolved. The federal definition of small employer creates its own confusion. For example, the Small Business Administration defines a small business based on industry, annual receipts, and number of employees (e.g., a small hydroelectric power generator is one with 500 or fewer employees, a small water supplier is a business with annual receipts of \$30 million or less, and a small manufacturer of dog and cat food is defined as having 1,000 or fewer employees). In contrast, the IRS's small business and self-employed tax division provides resources for taxpayers who file Form 1040, Schedules C, E, F, or Form 2106, as well as small businesses with assets under \$10 million. Assets are not the same as annual receipts. A foreign corporation is defined based on the foreign ownership percentage of a U.S. company or a foreign corporation engaged in business in the U.S.

For example, a question about the employer instructions for Form W-4 may be asked by any employer because all employees must have a Form W-4 on file with their employers. The IRS's website for the small business and self-employed center describes the worker classification decision. However, the decision on worker classification is not unique to small businesses. Instead, all employers must accurately classify workers. The Wage and Investment Division describes its priorities as reducing taxpayer burden, preventing identity theft and tax fraud, leveraging new technology, and increasing demand for

electronic products and services. These important issues overlap all employers and their payroll departments.

Because of the current IRS infrastructure, employer tools are managed inefficiently, duplicating services across the different business divisions. With a Payroll and Employment Tax Division, efficiencies could be streamlined where needed services are the same among all employers. Where there are differences for international businesses, self-employed, large and small employers, tax-exempt employers, and government entities, these could be addressed through sections or IRS experts within a Payroll and Employment Tax Division.

Services in a Payroll and Employment Tax Division

APA does not purport to know the specific details of the current IRS infrastructure in terms of what duties and management authority each employee performs in all of the agency's divisions. Therefore, APA cannot offer an organizational chart. Instead, below is a listing of the types of services payroll professionals seek from the IRS. The list is not all-inclusive or in any particular order.

Listing of payroll services for a Payroll and Employment Tax Division:

- Mergers and Acquisitions, all things Schedule R (Forms 941 and 940);
- Pay agent issues;
- Common paymaster reporting issues and mistakes;
- Correcting administrative errors on forms (e.g., Forms 941 and Schedule B);
- Abatement of failure to deposit, late deposits, failure to file and late filing, and Internal Revenue Code § 4908H penalties;
- Access, authentication, and uploading problems;
- Filing status changes (e.g., from a monthly to semiweekly depositor);
- Status of refunds (i.e., approved, funds returned); and
- Out of balance concerns regarding Form W-3.

To discuss further APA's recommendation to establish a Payroll and Employment Tax Division, please contact Alice Jacobsohn at 202-248-3901 or ajacobsohn@americanpayroll.org. Thank you for your consideration.

Sincerely,

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