



AMERICAN CITIZENS ABROAD
EDUCATE, ADVOCATE AND INFORM

February 25, 2019

The Honorable David J. Kautter
Assistant Secretary of the Treasury for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

The Honorable Lafayette G. Harter III
Deputy Assistant Secretary of the Treasurer for International Tax Affairs
US Department of Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Dear Assistant Secretary Kautter, Deputy Assistant Secretary Harter and Commissioner Rettig:

American Citizens Abroad, Inc. (ACA), a 501(c)(4) organization, and its 501(c)(3) sister organization, American Citizens Abroad Global Foundation, submit this letter on behalf of ACA's members and supporters impacted by the revisions to Form 5471 – Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

Purpose

The purpose of this letter is to request relief from the substantial reporting burdens imposed on U.S. citizens abroad with respect to their ownership of foreign corporations (the large majority of which are small businesses as generally characterized in the Internal Revenue Code). Two alternative solutions are provided at the end of this letter.

The Problem

Analysis conducted by ACA suggests that U.S. citizens abroad file over one million U.S. Federal tax returns each year (excluding filings by U.S. government employees). While it is unclear how many of these returns include Form 5471's, the figure is likely to be in the thousands. According to a survey conducted in 2017 by the Democrats Abroad organization, 16% of over 4,200 foreign-based survey respondents indicated they owned a small business or farm (although not all of the ownership would be through a foreign corporation).

Owners of foreign businesses face the challenge of being compliant with a substantial amount of new tax law taking effect in 2017 and 2018. The instructions to the 2018 version of Form 5471



list thirteen specific law changes impacting the preparation of the form. The Information and Technology Industry Council (ITIC) and the National Foreign Trade Council (NFTC) submitted a letter to Treasury and the Internal Revenue Service on January 11, 2019, noting that the basic 2018 version of Form 5471 has expanded to 16 pages (from 8 pages in 2017) – and could increase to 37 pages under certain reporting conditions. A separate Form 5471 is generally required for each foreign company.

Even if a taxpayer accurately calculates his or her tax liability, failure to complete the form in its entirety can result in a penalty under IRC Section 6038(b)(1) of \$10,000 for each Form 5471 that does not include complete and accurate information as described in Section 6038(a).

Request for Relief

ACA respectfully requests Treasury and the Internal Revenue Service to immediately implement one of the following alternatives to provide relief to U.S. citizens abroad who operate a small business through a foreign corporation:

1. Consistent with the recommendation of ITIC/NFTC, delay the effective date of the revised Form 5471 until the 2019 tax year for all taxpayers
2. Apply the general tests of small business status (e.g., aggregated gross receipts of less than \$25 million) to provide an option for small business owners to continue to use the pre-2018 version of Form 5471 for 2018 reporting (on the basis that such form will satisfy the information requirements of Section 6038(a))

Under either alternative, taxpayers would be required to conform to the new Form 5471 for the 2019 tax filing season after they (and their preparers) have been able to fully organize the newly-required information. Furthermore, the reduction in reporting obligations for 2018 would not impact the need for taxpayers to be compliant with the tax law in 2018.

Closing

On behalf of the thousands of U.S. citizens abroad who have committed the resources to starting a small business, we request that temporary relief be immediately provided from the extensive expansion of information requirements.

Sincerely,

Marylouise Serrato
Executive Director
American Citizens Abroad, Inc.