



Section of Taxation

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October 2, 2018

Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Comments on guidance regarding draft 2018 Form 1040 and related schedules

Dear Commissioner Rettig:

Enclosed please find comments regarding draft 2018 Form 1040. They are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Eric Solomon
Chair, Section of Taxation

Enclosure

cc: Sunita Lough, Project Director, Tax Reform Implementation Office, Internal Revenue Service
Jeffrey Tribiano, Deputy Commissioner, Operations, Internal Revenue Service
Kirsten Wielobob, Deputy Commissioner, Services and Enforcement, Internal Revenue Service
Nina Olson, National Taxpayer Advocate, Internal Revenue Service

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**AMERICAN BAR ASSOCIATION
SECTION OF TAXATION**

**Comments Concerning the 2018 Form 1040
and Associated Schedules**

These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by James Creech, Erin Stearns, Patrick Thomas, Nikki McCain, Grace Allison, and Carolyn Lee. Significant contributions were made by William Schmidt, Phyllis Horn Epstein, and Bob Wunderle. The Comments were reviewed by James Creech, Chair of the Individual and Family Taxation Committee, and Christine Speidel, Chair emeritus of the Pro Bono and Tax Clinics Committee. The Comments were further reviewed by Joseph Schimmel of the Section’s Committee on Government Submissions.

Although members of the Section who participated in preparing these Comments have clients who might be affected by the federal income tax principles addressed by these Comments, no such member of the firm or organization to which such member belongs has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: October 2, 2018

I. Introduction and Executive Summary

We commend the Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “Service”) for their commitment to taxpayers and for seeking comments on the current draft of the 2018 Form 1040.¹ Form 1040 is used by individual taxpayers to report their annual income, calculate their tax liability, and, if applicable, request a refund. In addition, Form 1040 often is used by third parties as a form of income verification (because it must be signed under penalty of perjury). Form 1040 must serve a wide range of taxpayers in terms of dollar amount of tax liability reported, taxpayer education level, and technical ability to file the return.

While the Service estimates that 92% of taxpayers will use software to prepare the roughly 150 million Forms 1040 received annually, the Service still receives 12 to 20 million paper returns per year. Based on the experience of the authors of these Comments, many paper filers are taxpayers who are least able to cope with the complexity of the Form 1040 or the federal tax laws. These taxpayers include the elderly who do not own a computer and who may quite literally have trouble seeing smaller print, as well as taxpayers of limited education who cannot complete the return without clear and precise instructions.

Because paper filers are among the least capable of navigating the complexity of the Form 1040, we recommend that the Service continue in its efforts to make the 2018 Form 1040 as simple and as legible as possible while still retaining the functionality needed to serve sophisticated taxpayers. As discussed in these Comments, we believe the 2018 Form 1040 could be improved by: (i) increasing overall visual clarity; (ii) simplifying the reporting of individual tax credits; and (iii) providing prominent and specific references to the instructions for each line item. In that regard we acknowledge the efforts of Treasury and the Service to reduce the 2018 Form 1040’s length from 72 lines to 24 lines.² Nevertheless, we believe that there is an opportunity to improve the 2018 Form 1040 and respectfully request that Treasury and the Service consider the changes recommended in these Comments.

II. Discussion

A. Overall Visual Clarity of the 2018 Form 1040

1. Summary

This section of the Comments examines the basic elements of the visual clarity of the 2018 Form 1040. Visual clarity is important for taxpayers because the clearer the form, the easier it is to complete accurately and in its entirety. The more complicated the form, the greater the opportunity for error. As noted above, beyond annual tax reporting, a copy of a Form 1040 is

¹ A request for comments on the draft 2018 Form 1040 was published by the Service on July 20, 2018 in the Federal Register. 83 Fed. Reg. 34698 (2018).

² An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054.

often required as income verification, including for obtaining a loan and completing student financial aid forms. The more complicated the form, the more time it takes for third parties to review and process.

In our view, the 2018 Form 1040 and related schedules are more difficult to read than the 2017 Form 1040 for a number of reasons. The type size is at least a full point size smaller, which makes the form less legible. The sections of the form are not as clearly identified as in prior years, and there are fewer visual line breaks that would help indicate to taxpayers that the type of information required has changed. Most importantly, the order of the form is not always intuitive. Brief examples of this are: (i) the fields addressing the standard deduction are interspersed with the taxpayer(s)' personal identifying information on page one, (ii) the standard deduction is referenced both on page one and again on page two (at line 8), but in a slightly different context, and (iii) line 12, seeking information about a taxpayer's "child tax credit/credit for other dependents" is presented without context or reference to instructions.

Additionally, the 2018 Form 1040 does not clearly indicate from the outset what schedules are likely to be needed and why. Taxpayers have no informational clues to identify the types of information required to accurately and completely report their income, deductions, credits, and other tax items. Where the 2018 Form 1040 does reference other forms or schedules, it does so by form number, which may cause confusion among taxpayers unfamiliar with the form numbers. For these reasons, we are concerned that the potential for taxpayer error, or for taxpayers to abandon an in-progress return, is higher for the 2018 Form 1040 and related schedules than it was for the 2017 Form 1040.

2. Recommendations and Explanation

We have a number of recommended changes to the 2018 Form 1040, each of which is discussed below.

(a) Increase the Font Size. The 2018 Form 1040 primary font is at least one point smaller than the 2017 Form 1040. This font size reduction could create additional difficulties for the elderly and other visually impaired taxpayers. It is possible that the font size was reduced to meet Treasury's goal of shortening the 2018 Form 1040. We believe that reducing the font size is a trade-off that the final product should not make and recommend that the font size on the final version of the 2018 Form 1040 should be no smaller than the font size as found on the 2017 Form 1040.

(b) Redesign the Basic Taxpayer Information Section on Page One. The 2017 Form 1040 began the return by seeking basic information about the taxpayer completing the return. The box requesting the taxpayer's name, spouse's name, address, and social security number are all grouped together. This permitted taxpayers to start the return by answering easy questions before answering any questions that require interpreting a legal question.

In contrast, the first question on the 2018 Form 1040 addresses filing status, which, although relatively basic, is a legal question that requires some background tax knowledge. For

example, a married taxpayer may not know the differences between married filing jointly or married filing separately. “Head of Household” is also a term defined by tax law that is not always intuitive to taxpayers. In addition, the order in which the 2018 Form 1040 requests information could be improved. For example, the form asks whether someone can claim the filer as a dependent in between questions seeking the spouse’s name and address. To address these and related issues, we recommend that the primary information section should be redesigned to closely match the 2017 information section.

The treatment of information for a spouse on a Married Filing Separately return is another point of confusion in this section of the form. We assume the blank line directly to the right of “Qualifying Widower” is where the taxpayer should include the name of a spouse on a Married Filing Separately return. We also assume the social security number for the spouse on a Married Filing Separately return should be entered on the spouse social security number line per the instructions on the 2017 Form 1040, but there is no language on the draft 2018 Form 1040 indicating these instructions.

(c) Move the Jurat to the End of the Form 1040. The 2017 Form 1040 placed the signature line directly below the lines that report either the refund or the amount due. Thus, taxpayers who physically signed their tax returns could readily see the tax due or the amount of the refund. This is not the case with the 2018 Form 1040. Instead, the 2018 Form 1040 places the jurat on the first page of the form, which we are concerned could increase the potential for fraud or negligence because taxpayers may not review the final tax liability or claim for refund before signing the return. Examples of problems that may be caused by this lack of review are: (i) taxpayers may be asked by unscrupulous preparers to sign without being given an opportunity to review the content of the return, (ii) it may increase the number of innocent spouse cases because a signature separate from the liability may not provide knowledge of the couple’s income to the non-earner spouse, and (iii) taxpayers may inadvertently only complete the first page of the return thinking that all that was needed to file a return was basic taxpayer information and a signature. To avoid these potential issues, we recommend moving the signature line to the end of the Form 1040 as it has been in past years.

(d) Insert a Space between Lines 7 and 8. The draft 2018 Form 1040 does not place visual breaks or other visual cues in between different sections of the return. For example, line 7 of the 2018 Form 1040 is where the final adjusted gross income is reported, and line 8 is the amount of the standard or itemized deductions. There is no break between the two lines. We are concerned that this may lead to paper filers making mistakes by filling out the wrong line item. This could be remedied by inserting a blank line (i.e., extra space) between lines 7 and 8. Doing so would provide a clear visual indication that the type of information asked for by the form has changed.³

(e) Make the Caption “Schedule 4 Other Taxes” More Specific. We recommend making the title to this schedule more specific. We are concerned that the title does not adequately alert taxpayers of what the purpose of the schedule is and may lead taxpayers who

³ The form could also provide clearer identification that items listed on line 7 or above are income and items listed on lines 8 to 13 or below are credits or deductions.

are required to complete Schedule 4 to overlook it. For clarity, we recommend rewriting the caption to read: “Self-Employment and Other Taxes.”

B. Lines Affecting Tax Credits

1. Summary

This section discusses how refundable and nonrefundable credits are reported on the 2018 Form 1040. Some individual tax credits, such as the child tax credit, are claimed by both high- and low-income taxpayers. Many other tax credits, such as the Earned Income Tax Credit (the “EITC”) are means-tested and are available only to taxpayers with incomes below a certain adjusted gross income. For many low-income taxpayers, refundable tax credits can constitute a significant portion of their annual cash flow. For example, a married couple filing jointly in 2018 with three dependents, who has earned income of \$24,000, will qualify for refundable credits of more than \$9,600 – more than 28% of their annual cash receipts. We believe that further improving the clarity of the 2018 Form 1040 will help ensure that taxpayers who are eligible for these credits understand how to properly claim them and those who are not eligible do not claim them in error.

2. Recommendations and Explanation

The Service has devoted considerable resources to encouraging low-income taxpayers to claim the refundable credits to which they are entitled. On the draft 2018 Form 1040, a number of these credits are either generally described, described using an abbreviation, or referenced using a form number. We believe the ease of use of the 2018 Form 1040 would be improved by increasing the use of plain language, and additional labeling, as is discussed below.

(a) **Lines 12 and 13.** The description on line 12 is “Child Tax Credit,” but the form actually is seeking the amount of the *nonrefundable* child tax credit as opposed to the amount of the *refundable* “Additional Child Tax Credit” (which is reported on Schedule 8812 and further reported on line 17 of the 2018 Form 1040). In previous iterations of Form 1040, the child tax credit line was grouped with other nonrefundable credits clearly separated and marked on the form and the additional child tax credit was listed with refundable tax credits and clearly spelled out on the form. In the new draft, we are concerned that a taxpayer might mistakenly report all child tax credits on line 12 and then lose the refundable portion because the tax liability is zero. To address these concerns, we have three specific recommendations relating to lines 12 and 13 as follows:

- Line 12 should be retitled to clearly identify that it is for the nonrefundable Child Tax Credit and that the refundable Child Tax Credit should be reported on line 17. Thus, for example, Line 12 could be revised to read: “child tax credit/dependent tax credit (nonrefundable).”
- Line 12(b) should be revised to read: “Other nonrefundable credits from Schedule 3, line 55.”

- Having made the two changes listed above, the words “Add any amount from Schedule 3 and check here” should be deleted from line 12, and line 13 should be revised to read: “Subtract the sum of lines 12a and 12b from line 11. If zero or less, enter -0-.”

(b) **Line 17.** We also believe that line 17 could be improved. In the draft 2018 Form 1040, line 17 contains three boxes that are labeled “EIC,” “Sch 8812,” and “Form 8863.” We are concerned that the box labeled “EIC” could be confusing to taxpayers because it uses an abbreviation with which not all taxpayers who claim the Earned Income Credit may be familiar. (Indeed, in our experience, the EIC is more commonly referred to as the EITC, and taxpayers who have heard of the EITC may not understand that the EIC is the same credit.) Similarly, we are concerned that the boxes labeled “Sch 8812” and “Form 8863” could confuse taxpayers because their significance is not readily apparent to the user of the form (unless the user has knowledge of the tax forms). For these reasons, we recommend the following modifications:

- The form should include an explanatory bubble in the margin to the left of line 17 that should read as follows: “Claim earned income, additional child and/or education credit here.”
- The EIC box should be relabeled as “Earned Income Tax Credit” to make the name on the Form consistent with its common usage.⁴
- The reference to Schedule 8812 should be renamed “Additional Child Tax Credit from Schedule 8812,”⁵ and the reference to Form 8863 should be renamed “Refundable Education Credits from Form 8863.” (We believe that identifying a credit by name as opposed to form number reduces the background knowledge needed for taxpayers to recognize that a box may apply to them.)
- The last line of Line 17 should be revised to read: “**Add** amount from Schedule 5, line 75.”

(c) **Schedule 5.** We have a number of comments regarding Schedule 5.

- **Line 72.** We are concerned that excess social security withholdings can be too complicated for many taxpayers to understand without guidance and, consistent with our belief that the Form should direct the taxpayer to the instructions wherever relevant, we recommend that line 72 read: “Excess social security and tier 1 tax withheld (see instructions).”

⁴ Alternatively, we recommend that the abbreviation “EIC” be spelled out as “Earned Income Credit.”

⁵ Alternatively, we recommend that the reference to “Sch 8812” be clarified to read: “Additional Child Tax Credit, Schedule 8812, line 15.”

- **Line 74a.** To improve the clarity of this line, we recommend that line 74a read: “Amounts from Form 2439 (see instructions).”
- **Line 75.** We recommend deleting the second sentence. We believe the phrasing of the caption, and its verbatim inclusion in the second sentence creates uncertainty. The caption of the form and the bubble to the left of lines 48-55 already state that nonrefundable credits are reported here and that taxpayers have sufficient information to correctly calculate line 75.
- **Caption.** The caption of Schedule 5 – Other Payments and Refundable Credits – could be modified to convey more information. That is, we believe that the caption is intended to make clear that those refundable credits that are claimed on line 17 should not be entered again on Schedule 5. Stated differently, it is not clear that the word “Other” modifies not only the word “Payments,” but also the words “Refundable Credits.” To address this, we recommend the caption be revised to read: “Other Payments and Other Refundable Credits” or, alternatively, the order of the words in the caption could be reversed to read: “Certain Refundable Credits and Other Payments.”

We believe that the changes noted above are consistent with the Service’s objective of encouraging low-income taxpayers to claim refundable credits for which they qualify.

C. The Importance of the Instructions

1. Summary

It is difficult to overstate the importance of the instructions to the Form 1040. This section discusses how references to the instructions can be used to help taxpayers confidently and accurately complete the 2018 Form 1040.

2. Recommendations and Explanation

(a) **Initial Reference to the Instructions.** During the process of completing Form 1040, many taxpayers are confronted with terms that they may not fully understand. Taxpayers who prepare their own returns with consumer software have a user interface that helps make sense of the unfamiliar terms. Taxpayers who file paper returns may have only the instructions to assist them. Taxpayers who reference the instructions will not only find help with unfamiliar terms but will also find line-by-line guidance, helpful examples, and the answers to frequently asked questions. We believe that placing a prominently displayed bold line item before the first question on the return would help ensure taxpayers are aware of the valuable instructions that accompany the Form:

If You Are Unsure How to Complete a Line, Additional Information and Answers to Frequently Asked Questions Can Be Found in the Instructions.

(b) ***Subsequent References to the Instructions.*** In addition to the initial reference to the instructions, we suggest that references to the instructions should be prominently displayed on each page. We believe that incorporating repeated references to the instructions will alert taxpayers that the instructions are important. Although bold type may not be needed every time the instructions are mentioned, we believe it would be helpful for each page of the 2018 Form 1040 and the associated schedules to make a clearer reference to the instructions. The references to the instructions should be uniform; for example, they should not alternate between “see instructions” and “see inst” as in the current draft.

(c) ***Increase the Specificity of the References.*** Finally, we recommend that if a line item on the form references the instructions, it should specifically refer to the part of the instructions containing further information. The 2017 Form 1040 instructions are approximately 100 pages long. Referencing a specific page number would reduce the time and effort needed for a taxpayer to find an answer. For example, on line 17(a) on the draft 2018 Form 1040 regarding the EITC, the usefulness of the reference to the instructions would be enhanced if, instead of stating “(see inst.),” the Form stated “(see instructions p._).” We believe that giving taxpayers a reference point increases the likelihood taxpayers will actively seek information to clarify items they do not fully understand and reduce paper filers’ error rates.

III. Conclusion

Revising Form 1040 is a difficult task. An overwhelming majority of taxpayers use either a paid preparer or consumer focused software to prepare and file their tax returns. Nevertheless, a substantial number of taxpayers continue to file paper returns. We, like the government, believe that all taxpayers should be given the tools to accurately and completely prepare their individual tax returns. We appreciate the efforts of Treasury and the Service to redesign Form 1040. We hope that these Comments will be used to improve even further Form 1040.