

Legislative Recommendation #10**Adjust the Filing Threshold for Taxpayers Filing as Married Filing Separately and Nonresident Alien Individuals****PRESENT LAW**

IRC § 6012(a)(1)(A) generally requires individuals to file tax returns if their incomes equal or exceed the sum of (i) the “exemption amount” provided in IRC § 151 and (ii) the amount of the applicable standard deduction for taxpayers filing as an individual, head of household, surviving spouse, or married filing jointly, as provided in IRC § 63(c). However, the IRC does not apply the standard deduction amount in determining whether married taxpayers filing separately (MFS) must file tax returns, and nonresident alien individuals are not eligible to claim the standard deduction. Thus, MFS taxpayers and nonresident alien individuals generally must file returns if their incomes equal or exceed solely the exemption amount.¹

The Tax Cuts and Jobs Act of 2017 (TCJA) suspended the personal exemption for tax years (TYs) 2018-2025, effectively reducing it to zero.² As a result, MFS taxpayers and nonresident alien individuals must file tax returns if they have incomes equal to or greater than zero dollars, even in cases where they will not have a tax liability.

REASONS FOR CHANGE

The House Ways and Means Committee report accompanying the TCJA clarified the intent behind suspending the personal exemptions and increasing the standard deduction was to “simplif[y] the tax code while allowing a minimum level of income to be exempt from Federal income taxation.”³ For the majority of taxpayers, the TCJA raised the threshold at which the taxpayer must file a return because it increased the standard deduction to more than the sum of the exemption amount and the previous standard deduction amount.⁴ However, the result for MFS taxpayers and nonresident alien individuals — eliminating the minimum level of income exempt from tax and reducing the filing threshold to zero — conflicts with this congressional intent.

Married U.S. citizens and resident aliens may file MFS for several reasons, ranging from a choice to pay as little tax as possible under the law to a need to protect one’s privacy in a domestic abuse situation involving a spouse. Without at least a minimum filing threshold, these taxpayers and nonresident aliens must file returns, even if they are not working or earning any income during the tax year.

The IRS, recognizing congressional intent and the administrative burden on taxpayers, provided relief to MFS taxpayers by setting the filing threshold at \$5.⁵ For nonresident alien individuals, the IRS similarly set

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- 1 IRC §§ 6012(a)(1)(A) (imposing a tax-return filing requirement on married taxpayers filing separate returns) and 63(c)(6) (providing that nonresident alien individuals have a standard deduction amount of zero).
 - 2 TCJA, Pub. L. No. 115-97, § 11041, 131 Stat. 2054, 2082 (2017) (codified at IRC § 151(d)(5)(A)).
 - 3 H.R. REP. No. 115-409, at 125 (2017).
 - 4 For TY 2018, prior to the TCJA, the personal exemption was \$4,150, and the standard deduction was \$6,500 for an individual, resulting in a filing threshold of \$10,650 for an individual taxpayer. Rev. Proc. 2017-58, 2017-45 I.R.B. 494. For TY 2018, the TCJA raised the standard deduction to \$12,000 for an individual, thus increasing the filing threshold by \$1,350 for an individual taxpayer. TCJA, Pub. L. No. 115-97, § 11021, 131 Stat. 2054, 2072 (2017) (codified at IRC § 63(c)(7)(A)).
 - 5 IRS Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad (Dec. 2019).

the filing threshold at \$5 for TY 2018, but it failed to do the same for TY 2019.⁶ Although establishing a \$5 filing threshold removes the requirement that taxpayers file returns when they earn no income, it continues to impose a filing burden on taxpayers who do not earn enough income to have a tax liability. For TY 2020, the standard deduction for MFS taxpayers is \$12,400, which is available if neither spouse itemizes deductions. Therefore, MFS taxpayers who have incomes below \$12,400 and are eligible to claim a standard deduction must file tax returns even though they do not have income tax liabilities. This filing requirement also imposes additional burden on the IRS, which must process the returns. Returning the filing threshold for MFS taxpayers and nonresident alien individuals to an amount equal to the personal exemption prior to its suspension would reduce burden for both taxpayers and the IRS. Such a change would also be in accord with Congress's intent to preserve a minimum level of individual income exempt from tax.

RECOMMENDATION

- Amend IRC § 6012(a)(1)(A) to provide that taxpayers for whom the basic standard deduction is not available are not required to file returns if their incomes do not equal or exceed \$4,150 for TY 2018, adjusted for inflation for TYs 2019-2025.

⁶ IRS Pub. 519, U.S. Tax Guide for Aliens, for use in preparing 2018 Returns 35-36 (Feb. 2019); IRS Pub. 519, U.S. Tax Guide for Aliens, for use in preparing 2019 Returns 34 (Mar. 2020).