

Legislative Recommendation #9**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 gross income equals or exceeds the sum of (i) the “exemption amount” provided in IRC § 151 and (ii) the applicable standard deduction amount provided in IRC § 63(c). However, some individuals must file returns if their gross income equals or exceeds solely the exemption amount. They are:

- U.S. resident taxpayers who are married but file separate (MFS) returns; and
- Nonresident alien individuals, regardless of their filing status.¹

If the Tax Cuts and Jobs Act of 2017 (TCJA) had not been enacted, the exemption amount for a single taxpayer for tax year (TY) 2018 would have been \$4,150, meaning that these two groups of taxpayers would be required to file returns only if their incomes exceeded that amount.² However, the TCJA suspended the personal exemption for TYs 2018-2025, effectively reducing it to zero.³ As a result, MFS taxpayers and nonresident alien individuals must file tax returns if they have gross income equal to or greater than zero dollars, even if, after taking into account allowable deductions and other adjustments, their taxable income is zero and they owe no tax.

REASONS FOR CHANGE

The House Ways and Means Committee report accompanying the TCJA clarified that its intent in suspending the personal exemption, which was accompanied by an increase in the standard deduction, was to “simplif[y] the tax code while allowing a minimum level of income to be exempt from Federal income taxation.”⁴ For the majority of taxpayers, the TCJA raised the threshold at which the taxpayer must file a return.⁵ However, the result for MFS taxpayers and nonresident alien individuals, who now must file tax returns even if they have zero dollars of gross income, runs contrary to this congressional intent.

Married taxpayers 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 their 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 for TYs 2018, 2019, and 2020.⁶ For nonresident alien individuals, the IRS similarly set the filing threshold at \$5 for TY 2018, but it did not do so for TY 2019 or

1 IRC § 6012(a)(1)(A) (imposing a tax-return filing requirement on married taxpayers filing separate returns without taking into account the standard deduction) and § 63(c)(6) (providing that nonresident alien individuals have a standard deduction amount of zero).

2 TCJA, Pub. L. No. 115-97, 131 Stat. 2054 (2017); Rev. Proc. 2017-58, § 3.24, 2017-45 I.R.B. 489, 494. Having a filing requirement does not necessarily mean there is a tax liability. For example, in TY 2018, tax was imposed on MFS taxpayers whose taxable income exceeded \$9,525. Rev. Proc. 2017-58, § 3.01, 2017-45 I.R.B. 489, 491.

3 TCJA, Pub. L. No. 115-97, § 11041, 131 Stat. 2054, 2082 (2017) (codified at IRC § 151(d)(5)(A)).

4 H.R. REP. NO. 115-409 at 125 (2017).

5 If the TCJA had not been enacted, the standard deduction for a single individual taxpayer for TY 2018 would have been \$6,500 and, as noted, the exemption amount would have been \$4,150, resulting in a filing requirement if gross income equaled or exceeded \$10,650. Rev. Proc. 2017-58, §§ 3.14 and 3.24, 2017-45 I.R.B. 489, 493-494. For TY 2018, the TCJA suspended the personal exemption but raised the standard deduction to \$12,000 for an individual, an increase in the filing threshold of \$1,350. TCJA, Pub. L. No. 115-97, § 11021, 131 Stat. 2054, 2072 (2017) (codified at IRC § 63(c)(7)(A)).

6 IRS Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, 3 (2018-2020 versions).

2020.⁷ Although establishing a \$5 filing threshold removes the requirement that these taxpayers file returns when they have no income, it continues to impose a filing burden on those whose income exceeds \$5 but who do not have a tax liability. This filing requirement also imposes an additional burden on the IRS because it must process these returns despite the taxpayers having zero tax liability. 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 consistent 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 MFS and nonresident alien taxpayers whose gross income does not equal or exceed \$4,150 for TY 2018, adjusted for inflation for TYs 2019-2025, are not required to file a tax return.

⁷ IRS Pub. 519, U.S. Tax Guide for Aliens, 35-36 (Feb. 2019); IRS Pub. 519, U.S. Tax Guide for Aliens, 34 (Mar. 2020); IRS Pub. 519, U.S. Tax Guide for Aliens, 35 (Feb. 2021).