



March 15, 2024

Mr. Ken Corbin
Commissioner, Wage and Investment Division and Chief Taxpayer Experience Officer
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Possible Form 2210 penalty calculation issues

Dear Mr. Corbin:

Questions are more often arising relating to penalty calculations and whether tax professionals have the option to calculate correct withholding penalties when complexities arise. Such an approach would prevent IRS post-filing communications, inquiries from taxpayers, and prevent failure to pay issues. This approach also wouldn't be inconsistent with IRS' Strategic Operating Plan, which includes an objective focused on quickly resolving taxpayer issues.

As an example, NAEA would like to highlight a situation with Form 2210 (Underpayment of Estimated Tax by Individuals, Estates, and Trusts) penalty calculations.

Background: On October 16, 2023, IRS [further postponed](#) for most California individuals and businesses filing and payment deadlines from October 16 to November 16, 2023. IRS advised taxpayers they need not contact the agency to receive the disaster-related relief as the agency "automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area."

Issue: As long as affected California taxpayers made estimated first, second, and third quarter tax payments by November 16, those payments are considered timely. Some software packages have tackled this issue by waving tax pros off of filing Form 2210 for affected taxpayers. Should a tax pro miss this exception to standard filing procedures, the Form 2210 should miscalculate penalties, using the baseline due dates (e.g., April 15, June 15, and September 15) rather than the California disaster-adjusted due date of November 16th.

We believe tax professionals are taking—intentionally or unintentionally—one of several possible approaches to this issue:

- File federal tax returns with the Form 2210 penalty as calculated.
- Override the underpayment penalty, file tax return without a Form 2210 and advise client IRS will bill later for the correct penalty amount.
- Attempt a correct penalty calculation and advise client to pay the calculated amount.

Each of these approaches is imperfect. They all rely on IRS to correctly calculate estimated tax underpayment penalties for all taxpayers eligible for disaster penalty relief, and communicate to taxpayers the cause of an unexpected refund or notice.

Given the non-trivial number of taxpayers who file Form 2210, we would appreciate some clarity around the agency's approach to this unusual circumstance.

- How does IRS plan to ensure the returns of taxpayers eligible for the California disaster withholding penalty relief reflect the benefits of that relief?
- When the IRS calculations differ from those of a taxpayer (or their tax professional), how will IRS communicate this? Will the refund of overpayments be paired with a notice explaining the specific reason for the refund? And will IRS use math error notices to notify those it believed underpaid estimated tax?
- As an aside, we also see possible issues with part-year California residents and IRS' ability to determine independently those taxpayers' penalty relief eligibility. IRS typically uses a zip code-based filter to determine eligibility for disaster relief. How will IRS identify those who lived part year in California?

I close by thanking you for your commitment to tax administration—and, in your dual role, to taxpayers' and tax professionals' experience. Should we be able to assist, or should you have any questions about this letter, please contact our Executive Vice President, Megan Killian, CAE.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Leachmoore". The signature is fluid and cursive, with the first name being the most prominent.

Cynthia Leachmoore, EA
President

cc: Ms. Erin Collins, National Taxpayer Advocate