

# CLIENT ALERT

## Tips for Managing Tax Audits During the COVID-19 Shutdown

Mar.25.2020

### March 27, 2020 update:

IRS LB&I has suspended the IDR enforcement process for taxpayers who are unable, due to the COVID-19 pandemic, to respond timely to an IDR. The [announcement](#) says that managers may continue with the IDR enforcement process if, in their judgment, it is warranted by the interest of tax administration (e.g., a case with a short statute). The announcement does not impact the issuance of IDRs; it explicitly states that examiners can continue to issue and receive IDRs.

### April 1, 2020 update:

In response to the COVID-19 pandemic, the IRS has revised its rules regarding signatures and document transmissions.

Effective March 30 and until July 15, 2020, IRS employees will accept images of signatures and digital signatures. During this time, the IRS is also changing its rules regarding email.

To eliminate mailing, the IRS encourages its employees to use eFax and its other established secured messaging systems. However, if unable to use one of those methods, the IRS will allow emailing documents subject to conditions. If a taxpayer wants to email an IRS employee a document, then (1) the IRS employee must authenticate the identity of the sender by phone and verbally verify the email address, (2) the IRS employee must advise the taxpayer that such communications are not secured and to redact as much identifying information as possible, and (3) the taxpayer must state in the email or attached cover letter that “The attached [name of document] includes [name of taxpayer]’s valid signature and the taxpayer intends to transmit the attached document to the IRS.” An IRS employee may email documents to a taxpayer if the taxpayer consents and the IRS employee sends the document through a password-protected Secure Zip attachment.

These rules apply to: extensions of statute of limitations on assessment or collection, waivers of statutory notices of deficiency and consents to assessment, agreements to specific tax matters or tax liabilities (closing agreements), and any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures (e.g., a case specific Power of Attorney).

As companies and the IRS switch to telework, taxpayers are dealing with remote federal tax audits and Appeals. This is an unprecedented situation, and there are likely to be growing pains for both taxpayers and the IRS. Below is an overview the IRS’s current statements regarding Exam and Appeals operations and some tips for taxpayers who are managing remote audits.

## Status of Audits

On March 24, the IRS issued a [statement](#) regarding its operations during the COVID-19 emergency, in which it said that Exam, Appeals, and Chief Counsel are still working their caseloads. This is consistent with what we have seen in the last week—in our matters, we have seen all three units still moving forward amidst the transition to telework.

For taxpayers who do not have active audits, the IRS [announced](#) on March 25 that it generally will not start a new audit during this period unless necessary to preserve the statute of limitations. The IRS stated that some corporate and business taxpayers may desire to begin an examination while people and records are available and respective staffs have capacity. If it is in the best interest of both parties and appropriate personal are available, the IRS may initiate an examination with the understanding that COVID-19 developments could later reduce activities for an agreed period. The IRS also said it will continue to work refund claims where possible, without in-person contact.

## Communication

Like every audit, communication is critical. You should have a conversation with your auditor regarding the status of your audit, the next steps, and the expectations of both sides. Discuss with your auditor the best way to communicate (*e.g.*, email to setup a call so I can make sure my kids won't interrupt).

You should confirm with your auditor the use of email. The IRS prohibits its agents and officers from emailing taxpayer information in either messages or attachments unless they are using IRS approved encryption technology. You should confirm with your auditor what can and cannot be transmitted via email. For example, if we are sending an unencrypted email, we do not include taxpayer information and use a code to reference the taxpayer's identify (*e.g.*, C\*\*). You should confirm that the auditor can send you documents via email or e-fax and, if he or she has to mail something, that they will also send you an electronic copy. If for some reason that is not possible, ask your auditor to let you know when they have mailed documents so you can make arrangements to get them. Many IRS agents and Appeals officers already have the ability to work remotely from client sites so the conversion to telework may not be as onerous as one would expect.

In today's environment, in-person meetings will either need to be postponed or switched to phone or video meetings. We suggest strategically evaluating whether an in-person meeting is worth the delay and the potential for conflict with the auditor, who may wish to proceed with an electronic meeting. If it is just you and the auditor, a phone call may work. If you were planning a presentation that relied heavily on spreadsheets or other software, consider whether you and the auditor have the technology to enable a smooth presentation.

The strategic balance may be different for larger meetings, such as those including company business personnel. If you had employee interviews set up, you should consider whether Exam can to obtain the necessary information in a telephone or video conference, if you can to adequately prepare the employee for the interview remotely, and whether the employee will be comfortable on a telephone call.

The same applies to taxpayers currently in Appeals. In our active Appeals cases, the Appeals Officers seem dedicated to move their cases along. If you have an upcoming Appeals conference, you should consider the benefits and drawbacks of a video Appeals conference. We generally prefer an in-person Appeals conference, but postponing an Appeals conference until it can be

in-person may be too long of a delay. At this point it is unclear when we will be returning to our offices plus it may take several weeks or months for the Appeals Officer to go through his inventory of postponed conferences.

## **Deadlines**

We suggest reviewing your audit plan and having a conversation with your auditor to let them know you will respond diligently to all requests, including information document requests (IDR), but there may be some delay given the realities of the current situation. Although there has been no official relaxation of the timetable for the IDR enforcement process, in our experience examining agents have been reasonable about the number and timing of the IDRs they issue in recognition of unavoidable delays.

Certain deadlines for filing returns and paying tax have been extended (see our [prior alert](#)). Deadlines related to tax audits, Appeals, and litigation, however, have not been extended generally. Do not assume that a deadline has been extended. Also, keep in mind that certain critical statutory deadlines have not been extended: (1) deadline to file an amended return for a refund, (2) deadline to sue for a refund, and (3) deadline to petition the U.S. Tax Court. For an overview of these deadlines, please see our [Managing Audits Quick Reference Guide](#). The IRS can extend the deadline to file an administrative refund claim (see [Form 872](#), Consent to Extend Time to Assess Tax) and to file to sue for a refund (see [Form 907](#), Agreement to Extend Time to Bring Suit). The IRS cannot extend the deadline to file in U.S. Tax Court, but that deadline is triggered by the IRS's issuance of the notice of deficiency (i.e., the 90-day letter). The IRS may be willing to delay the issuance of a notice of deficiency, provided the date for expiration of the statute of limitations for assessment is not imminent or the statute is extended.

Taxpayers should expect requests from the IRS to extend the statute of limitations to assess tax generally. In its IRS Operations During COVID-19 statement, the IRS said that it would work with taxpayers to extend the statute of limitations in cases with an expiring statute. Given the complexities of telework and the uncertainty of when we will return to business as usual, we expect the IRS to ask for extensions earlier than it normally would and that the requested extensions will be longer than they normally would be.

## **Records**

As always, keep detailed records. Be sure to keep records regarding your agreement to email documents, any information and documents you send to the IRS, changes to meetings and interview schedules, and any deadline extensions.

It is important to get your agreements with the IRS in writing—you want to clarify what the agreement is and memorialize it. These are hectic times and without a written record it may be difficult in a few months to remember your informal understandings with the IRS. An email exchange can be invaluable to clear up a misunderstanding later in an examination.

## **Bottom Line**

As it has been said many times during these past few weeks, we are all in this together. For both taxpayers and the IRS, there will be delays and the process will be cumbersome. Understanding and flexibility from both sides will ensure better audits.

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