

CLIENT ALERT

Ten Things to Know about IRS Audits & Appeals During COVID-19 Pandemic

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It is understandable if taxpayers are unsure of the status of IRS audits and appeals. In the last few weeks, the IRS has issued several notices to the public and memoranda to its employees detailing changes to audit procedures during the COVID-19 pandemic. Here are the top ten things taxpayers should know about IRS audits and appeals.

Number 1: No new audits (generally)

The IRS generally will not open new examinations during the COVID-19 pandemic unless the statute of limitations is expiring (IRS [People First Initiative](#)) or the examination arises from taxpayer action (discussed below) ([LB&I-04-0420-0009, April 14, 2020](#) (“April 14 LB&I Memo”). LB&I auditors may expand existing audits to include new tax years, with manager approval.

Auditors are permitted to work on new cases without opening an examination (*e.g.*, audit planning) as long as taxpayer contact is delayed until after the emergency declaration is lifted.

Number 2: Open audits continue

Current audits will proceed, but without in-person contact (IRS [People First Initiative](#)). For LB&I examinations, the following will also continue as usual (again, without in-person contact): Compliance Assurance Process, Large Corporate Compliance, FATCA, and Qualified Intermediary programs ([April 14 LB&I Memo](#)).

The IRS has made clear that it will take steps necessary to protect all applicable statutes of limitations (*e.g.*, requesting extensions, issuing Notices of Deficiency) (IRS [People First Initiative](#)). However, if a statutory period is not expiring during 2020, the IRS says it is unlikely to take such actions before July 15, 2020.

Taxpayers with open audits may want to review our client alert [Tips for Managing Tax Audits During the COVID-19 Shutdown](#).

No. 3: IRS will examine and process Taxpayer initiated actions (*e.g.*, refund claims) where possible

Auditors are permitted to work on “consensual work initiated by taxpayers,” such as refund claims, pre-filing agreements, or voluntary disclosures if resources are available and the work can be done without in-person contact (IRS [People First Initiative](#); [April 14 LB&I Memo](#)).

No. 4: IRS evaluating campaigns to postpone

LB&I is assessing existing and new campaigns to determine which will be postponed and which will be allowed to continue ([April 14 LB&I Memo](#)). LB&I has stated that the following campaigns will continue during the COVID-19 pandemic: Syndicated

Conservation Easements, Micro Captive Insurance, Section 965 Transition Tax, and any future campaign related to the Tax Cuts and Jobs Act.

No. 5: Taxpayers have extra time for key audit and litigation deadlines

Notice 2020-23 extended deadlines for taxpayers. Taxpayers have until July 15, 2020 to perform “Specified Time-Sensitive Actions,” which are due on or after April 1. These actions include the time for filing all petitions with the Tax Court, filing for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax.

For information on the filing deadlines extended by Notice 2020-23, please see our [prior coverage](#).

No. 6: IRS has extra time for key audit and litigation deadlines

Pursuant to Notice 2020-23, the IRS now has an extra 30 days to perform “Time Sensitive IRS Actions” which are due on or after April 6 and before July 15. These actions include assessing any tax, giving or making notice of demand for payment of any tax, bringing suit by the United States, and allowing credit or refund of any tax.

Interestingly, taxpayer actions deferred under Notice 2020-23 are required to be performed by July 15, 2020, while IRS actions are postponed for 30 days. Thus, it appears IRS action could be required before or after July 15 (e.g., an IRS action originally required by April 30 is now required by June 30, and an IRS action originally required on June 30 is now required by July 30).

No. 7: LB&I has suspended its IDR enforcement process (generally)

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 (LB&I-04-0320-0007, March 25, 2020). 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 memorandum does not impact the issuance of IDRs; it states that examiners can continue to issue IDRs and receive responses.

No. 8: IRS accepting digital signatures

Effective March 30, and until July 15, 2020, IRS employees will accept images of signatures (scanned or photocopied) and digital signatures that use encryption techniques to provide proof of original and unmodified documentation (LB&I-NHQ-01-0320-0001, March 27, 2020 (“March 27 LB&I Memo”)). This guidance applies 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 Power of Attorney) This rule does not apply to documents that are filed with the IRS (e.g., tax returns).

No. 9: Auditors and Appeals Officers allowed to receive and send documents via email

To reduce the need for physical mail, the IRS encourages its employees to use eFax and its other established secured messaging systems. (March 27 LB&I Memo). However, if unable to use one of those methods, the IRS will temporarily allow taxpayers to

send the same documents for which the IRS is accepting photocopied or digital signatures (above) via email, 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.”

The IRS continues to send most documents to taxpayers via secure e-fax. An IRS employee may now temporarily email documents to a taxpayer if the taxpayer consents and the IRS employee sends the document through a password-protected Secure Zip attachment.

The rules permitting IRS employees to send and receive documents via email are in effect until July 15, 2020.

No. 10: Appeals conferences continuing via phone and video

Appeals conferences will continue, but without face-to-face conferences (IRS [People First Initiative](#)). Given Appeals’ large caseload, Appeals Officers may not allow taxpayers to postpone their Appeals conferences until a face-to-face meeting is possible. This is unfortunate for taxpayers. We usually recommend face-to-face Appeals conferences. The IRS has even acknowledged the importance of face-to-face meetings. As some may recall, a few years ago the IRS revised the Internal Revenue Manual (IRM) to make telephone conferences and video conferences the default. The IRS ultimately reversed course and modified the IRM to generally grant face-to-face conferences upon a taxpayer’s request. (IRM 8.6.1, Material Changes).

Taxpayers preparing for video Appeals conferences should consider the logistics. Appeals’ video conferencing technology is not the most user-friendly and is not designed for having multiple people calling in from multiple locations. This may limit the number of participants. In addition, taxpayers should consider the content of their presentation given the realities of telework (*e.g.*, the Appeals Officer may be unable to print documents or may view presentations on a small laptop screen).

Conclusion

Taxpayers should expect some growing pains as the IRS Agents and Appeals Officers adjust to these new procedures, some of which are a departure from longstanding IRS practice (*e.g.*, emailing documents). In some cases, it may be necessary for taxpayers to remind auditors and Appeals Officers of the new changes.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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