

How are taxpayers with open matters at IRS affected during the government shutdown?

October 8, 2013

In brief

On October 1, 2013, due to the lapse in Federal government appropriations, the IRS implemented a shutdown contingency plan reducing its workforce by approximately 90% during the shutdown. As a result, the IRS will only be completing specific operations until the Federal government shutdown is resolved. Federal tax law remains in effect and taxpayers should continue to meet all tax obligations to the best of their ability.

In detail

During the shutdown, the IRS is continuing operations that are:

1. authorized by law and funded
2. necessary for the safety of human life or protection of government property or
3. necessary to the shutdown of operations.

The following IRS operations are continuing during the shutdown:

- processing of tax returns that include remittances
- processing of electronic tax returns
- protection against expiration of the statute of limitations for assessment

- bankruptcy, liens and seizure cases
- IRS computer operations to prevent the loss of data
- criminal law enforcement and undercover operations.

The following IRS operations are suspended during the shutdown:

- all audit functions, examination of returns, and processing of non-electronic tax returns that do not include remittances
- non-automated collections
- legal counsel activities (eg, rulings and regulations)
- taxpayer services, such as call sites to obtain an Employer Identification Number (EIN) for a domestic or foreign company
- issuing refunds.

Automated notices are continuing to be mailed during the shutdown. Taxpayers who have appointments scheduled with an IRS examiner, revenue officer (Collections), Appeals officer, or representative from the Taxpayer Advocate should assume the appointments are canceled during the shutdown.

No live telephone customer service assistance is available during the shutdown. With the exception of the specific subjects discussed above, the IRS is not responding to written submissions from taxpayers or their representatives during the shutdown.

The IRS website is operating during the shutdown. The IRS's 63 page *FY14 Shutdown Contingency Plan* can be viewed in its entirety at www.irs.gov.

The IRS' website is also updated periodically with new information regarding the shutdown. IRS employees not furloughed during the shutdown are employed in the Wage and Investment, Criminal Investigation, and Information Technology Services divisions, as these divisions have responsibility for many operations that will continue during the shutdown. The Large Business & International (LB&I) and Small Business & Self-Employed (SBSE) divisions, Appeals, and the Office of Chief Counsel are operating at severely reduced staffing levels. Additionally, all employees of Taxpayer Advocate Service are furloughed. Furloughed employees are prohibited from engaging in official employment duties and responsibilities.

The takeaway

Although the IRS' administration of the internal revenue laws is severely curtailed during the period of the government shutdown, those laws remain in effect.

Filing returns, making payments and deposits: Taxpayers should continue to ensure that they are in compliance with their statutory duties, including filing timely returns, paying tax, and making timely tax deposits. For example, the due date of October 15, 2013, for filing tax year 2012 Forms 1040, *US Individual Income Tax Return*, under extension is near. Care should be exercised to obtain e-file confirmation or US certified mail – return receipt, as proof that a return was timely filed. In addition, quarterly returns, such as Form 720, *Quarterly Federal Excise Tax Return*, and Form 941, *Employer's Quarterly Federal Tax Return*, are due to be filed no later than October 31, 2013.

E-filing and use of Electronic Funds Transfer Payment System (EFTPS): Taxpayers who must file returns or make payments during the shutdown are encouraged to do so electronically. If a taxpayer is unable to file or pay electronically, any document or payment mailed to the IRS should be sent by certified mail with a return receipt requested, or sent by one of the designated private delivery services identified in Notice 2004-83.

Filing claim for refund: Taxpayers facing statutory deadlines, such as for filing a claim for refund, should ensure that the necessary documents are submitted prior to the expiration of the refund statute, and should retain proof of timely filing.

Statutory notice of deficiency:

While the US Tax Court is closed during the shutdown, a taxpayer that receives a statutory notice of deficiency (90 Day Letter) from the IRS must still file a petition with the Tax Court by the 90th or 150th day, as applicable. The shutdown does not extend the statutory period for filing a timely petition with the court to dispute a deficiency.

Elections and other time sensitive filings that require obtaining Employer

Identification Number (EIN): A domestic company that must file an election, such as Form 8832, *Entity Classification Election*, and must obtain an EIN to file the required form, may be able to obtain the EIN using the IRS's on-line 'EIN Assistant' at www.irs.gov. Companies that are ineligible to use the on-line service, such as foreign companies and certain domestic companies, must wait until the IRS resumes normal operations to obtain an EIN. Relief for a late election (eg, Rev. Proc. 2009-41) will

likely be available if the lack of an EIN prevents the filing of entity classification elections. Questions should be referred to a member of PwC's Tax Controversy and Regulatory Services (TCRS) group.

On-going IRS examinations and responding to examination

requests: While examination functions are suspended for the duration of the shutdown, there has been no specific guidance as to whether taxpayer response activities such as responding to Information Document Requests (IDRs), proposed adjustments, or filing protests to Appeals have also been suspended. It is recommended that taxpayers treat such matters as not delayed by the shutdown. Therefore, the taxpayer should respond by set deadlines by mailing all information to the assigned revenue agent.

Consent to extend statute of limitations for making

assessment: A Taxpayer that has executed one of the series of Forms 872, *Consent to Extend Time to Assess Tax*, should be aware of the imminent expiration of the statute of limitations for assessment. A taxpayer that needs to execute a new Form 872 should contact an IRS employee that has not been furloughed for assistance. A member of PwC's TCRS can assist.

Let's talk

For more information, contact your PwC team or the following authors:

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