March 8, 2019

Hon. Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on the Impact on Taxpayers of the Recent Partial Government Shutdown

Dear Commissioner Rettig:

Enclosed please find comments on the impact on taxpayers of the recent partial government shutdown and suggestions for future shutdowns. These comments are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Eric Solomon
Chair, Section of Taxation

Enclosure

cc: Michael Desmond, Chief Counsel, Internal Revenue Service
    Drita Tonuzi, Deputy Chief Counsel (Operations), Internal Revenue Service
These comments (“Comments”) are submitted on behalf of the American Bar Association Section of Taxation (the “Section”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Rochelle Hodes and Chuck Hodges. The following individuals, representing the Administrative Practice Committee and the Pro Bono & Tax Clinics Committee, provided substantial assistance in drafting these Comments: Bryan Camp, Sheri Dillon, Mitchell Horowitz, Elizabeth Maresca, Alexandra Minkovich, Chris Rizek, Mary Slonina, Christine Speidel, and Shamik Trivedi. These Comments were reviewed by Jennifer Breen, Chair of the Administrative Practice Committee. The Comments were further reviewed by John Colvin of the Section’s Committee on Government Submissions and by Eric Sloan, the Section’s Vice Chair of Government Relations.

Although members of the Section may have clients who might be affected by the federal tax principles addressed by these Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of one or more specific issues addressed by, these Comments has participated in the preparation of the portion (or portions) of these Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of these Comments.

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Date: March 8, 2019
We are pleased to provide comments in response to your request for feedback regarding the recent partial government shutdown. Our members have deep and varied experience in assisting a broad spectrum of taxpayers in their interactions with the Internal Revenue Service (the “Service”) and the United States Tax Court (the “Tax Court”). As a result of this experience, we have identified several ideas, discussed below, that, if adopted, could help to mitigate some of the effects of future shutdowns.

We would first like to acknowledge those Service employees who were called upon to work during the recent shutdown. Our members appreciate their commitment to government service. We also appreciate the efforts of the Service and its employees immediately after the recent shutdown to restore operations. These comments are prepared, in part, to assist in reducing the burden on taxpayers as well as the Service in the event of a future shutdown. In the interest of providing timely feedback, we are sharing high level descriptions of these ideas. We would be happy to provide more information upon request.

To mitigate the effects of a future shutdown, we respectfully recommend that the Service consider undertaking the following efforts.

- **Develop, in advance, a template that can be used as a framework for shutdown guidance that can be distributed to the public immediately upon a future shutdown.** We appreciate the guidance the Service provided on its website immediately after the shutdown ended with respect to the status of the examination and collection functions, and subsequently with respect to the Appeals function. Not only did this guidance provide taxpayers and practitioners with helpful information, but by widely distributing the information, the Service reduced the number of contacts from taxpayers and practitioners requesting basic information, such as whether an audit would continue, and freed Service resources to handle other issues.

  In this vein, we recommend that the Service develop, in advance, a template, in a question and answer (“Q&A”) format, that can be used as a framework for guidance that can be distributed to the public immediately upon a future lapse of funding. Having a basic framework prepared in advance so it can be deployed quickly when needed would benefit the public and the Service. This guidance could answer basic questions about services and resources available (and not available) during a shutdown, as well as general information about how the shutdown affects (or does not affect) ongoing compliance, examinations, collection activities, and litigation matters, and may be modified as needed. For instance, the Q&A could explain that interest and penalties continue to accrue during a shutdown and that tax return filing and any other statutory due dates, such as payment dates or other filing dates, are unchanged and, therefore, unaffected by a shutdown. We would be pleased to assist the Service in identifying questions that are of the most pressing interest to taxpayers and practitioners during a shutdown.

- **Develop, in advance, a template for guidance related to the postponement of time-sensitive acts occurring during a shutdown of the Service.** Rev. Proc. 2018-58, 2018-50 I.R.B. 990, provides a list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A. Though neither the Internal Revenue Code
(the “Code”)\(^1\) nor administrative guidance provides currently for a postponement of an act due to a government shutdown or other disruption at the Service, we recommend that the Service consider expanding relief for those situations to the extent allowable by the Code, or articulate whether legislative action is necessary.

- **Suspend the issuance of most automated notices for the duration of the shutdown.**
  The Service continued to issue automated notices during the shutdown. This increased the need for taxpayers or their representatives to interact with the Service during and immediately after the shutdown. Some automated notices, particularly those sent by the Automated Collection System, require taxpayers to contact the Service immediately to avoid severe consequences, such as a lien or levy.

  Automated notices often are sent on a schedule that is unrelated to the period of limitations for assessment or collection or another statutory deadline imposed on the Service. Because of the shutdown, taxpayers were unable to access the Service by telephone to discuss why the notice was sent or to resolve the matter. As a result, taxpayers corresponded with the Service by postal mail, fax, and by leaving telephone messages. We understand that, in many cases, because of uncertainties regarding which communication method would be successful, all methods were used, increasing the inventory of inquiries awaiting Service action after the shutdown and causing greater expense to the taxpayer. Suspending most automated notices for the duration of the shutdown would eliminate this additional Service correspondence and reduce taxpayer anxiety.

  We understand, however, that the government’s interests must be protected during the period when automated notices are suspended, and, therefore, we have two accompanying recommendations.

  1. For the duration of a shutdown, rather than automatically sending tax assessment notices 110 days after the date a statutory notice of deficiency has been mailed, send these notices 135 days after the date a statutory notice of deficiency has been mailed. By postponing this notice date by 25 days, the Service may be able to limit the number of premature assessments and associated correspondence mailed to taxpayers who have otherwise petitioned the Tax Court during the shutdown. This correspondence can be confusing to taxpayers who have petitioned the Tax Court, prompts additional correspondence with the Service and can have a chilling effect on their pursuit of judicial review of the liability in question.

    We do not believe that the 25-day delay would jeopardize the interests of the government, as the Service will always have at least 150 days\(^2\) after the date a statutory notice of deficiency is mailed, plus any time that was remaining on the

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\(^1\) Unless otherwise indicated, all “section” references are to the Internal Revenue Code of 1986, as amended (the “Code”), and all “Regulation section” references are to the Treasury Regulations promulgated under the Code, all as in effect on the date of these Comments.

\(^2\) The 150-day period comprises the 90-day period to petition the Tax Court plus 60 days under section 6503(a)(1).
assessment statute on the date the statutory notice of deficiency was mailed, to make the assessment.

2. In the rare situation that an action is required to protect periods of limitation or to meet other statutory deadlines, that action should be undertaken by a Service employee who is exempt from furlough during a shutdown. The affected taxpayer can be directed to contact that Service employee and that Service employee can be available by telephone for the taxpayer or the taxpayer’s representative to contact.

- **Payments.** Payment due dates are not suspended during a shutdown. We appreciate that the Service took steps to ensure that paper checks were accepted and credited to accounts during the shutdown. In light of this, we have the following recommendations related to payments.

  1. In the Q&A discussed above regarding standard shutdown guidance, inform taxpayers on how to contact the Service if and when electronic payment systems are not operating. In addition, we suggest the Service develop a communication plan for times when electronic payment systems become inoperable during a shutdown to ensure that taxpayers are aware and know how to make payments.

  2. Allow taxpayers to enter into the installment agreements required under section 6159(c), or streamlined installment agreements to the extent permitted by Service guidance, including fully automated online installment agreements with payment by ACH debit.

  3. Issue guidance detailing that a taxpayer’s inability to comply with a payment or filing statute due to a shutdown may be a basis for reasonable cause for abating penalties.

- **Partner with practitioner groups, such as the Section, to hold pro bono days at various locations around the country in the following months and in the immediate wake of any future shutdown.** Low-income taxpayers are often unrepresented and, therefore, may face more limited options when dealing with a Service issue during a shutdown. In this regard, it is our understanding that many low-income taxpayers have outstanding issues that arose or were complicated by the most recent shutdown. Many of our members are available to assist the Service and these low-income taxpayers through “pro bono days” to address those issues that remain unresolved. The Service has a long-established record of partnering with stakeholder groups to ensure that low-income taxpayers have the means to resolve federal tax issues they may encounter. Chief Counsel’s office has already initiated discussions with the Section to leverage this experience to assist low-income taxpayers who were affected by the shutdown. We recommend that the Service expand these efforts and engage with low-income tax clinics and other tax practitioner groups in addition to the Section.