

10 Insights Into IRS Audits And Appeals Amid COVID-19

By **David Fischer and Teresa Abney** (April 24, 2020, 7:41 PM EDT)

It is understandable if taxpayers and tax practitioners are unsure of the status of Internal Revenue Service 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 10 things taxpayers and tax practitioners should know about IRS audits and appeals.

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 or the examination arises from taxpayer action (discussed below).[1] Large Business and International, or LB&I, Division 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.

The impact of the COVID-19 slowdown on the total number of IRS audits is hard to predict. It is safe to say that the total number of audits opened in 2020 will be fewer than in prior years. Moreover, a small rush of audit notifications is likely to occur during the month or two after the emergency declaration is lifted, as auditors release the new cases they have begun working on.

As has been the case for a number of years in light of budget declines, the IRS should be expected to focus audit activity on legally significant or big-ticket items.

2. Open Audits Continue

Current audits will proceed, but without in-person contact.[2] For LB&I examinations, the compliance assurance process, large corporate compliance, Foreign Account Tax Compliance Act and qualified intermediary programs will also continue as usual (again, without in-person contact).[3]



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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.[4] However, if a statutory period is not expiring during 2020, the IRS says it is unlikely to take such actions before July 15.

We expect the already long period to complete an audit to become even longer, and that the COVID-19 slowdown will be an excuse to request extensions of the statute of limitations, like government shutdowns in the past. Tax practitioners should counsel clients to be patient and expect long delays.

3. IRS Will Examine and Process Taxpayer-Initiated Actions 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.[5]

The IRS expects a significant number of new refund claims to be filed in response to the Coronavirus Aid, Relief, and Economic Security, or CARES, Act, changes to net operating losses under Internal Revenue Code Section 2303, and minimum tax liability under IRC Section 2305.

The IRS is permitting taxpayers to submit these refunds on IRS Form 1139 — Corporation Application for Tentative Refund — via fax.[6] Although these so-called quickie refunds do not require an examination before processing, the IRS is likely to be overwhelmed with taxpayer refund requests that do not follow the quickie procedure. Taxpayers should expect delays in the processing of taxpayer initiated actions generally.

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.[7] 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.

Taxpayers may see an increase in campaign-focused audit activity in the next several months. The realities of telework — lack of access to physical documents, slower electronic resources, relying on laptop screens — may make campaign-focused audits easier for auditors than traditional audits.

A traditional audit requires an auditor to try to identify issues from the tax return, reviewing hundreds of pages of tax return forms and attachments, then deciding what areas deserve inquiry and how to develop them. In contrast, a campaign-focused audit should allow the auditor to determine quickly whether the issue arises on a return, and to proceed based on the procedures established for the campaign. Working at home seems likely to accelerate the switch from traditional audits to campaign-focused audits.

5. Taxpayers Have Extra Time for Key Audit and Litigation Deadlines

IRS Notice 2020-23 extended deadlines for taxpayers.[8] Taxpayers have until July 15 to perform “Specified Time-Sensitive Actions,” due on or after April 1. These actions include the time for filing all petitions with the U.S. 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.

Given the importance of the deadlines at issue, taxpayers should carefully confirm that their deadline is covered by Notice 2020-23. If there is no need for delay, taxpayers may want to consider filing per the statutory deadline without regard to the extension, as a precautionary measure.

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 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 U.S., and allowing credit or refund of any tax.

Interestingly, taxpayer actions deferred under Notice 2020-23 are required to be performed by July 15, 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).

As statute of limitations is a first line of defense against IRS actions, we expect some taxpayers will challenge whether IRS actions were timely, including whether extensions of the time for the IRS to act were valid under Notice 2020-23 and the Internal Revenue Code.

7. LB&I Enforcement of Information Document Requests Suspended (Generally)

LB&I has suspended the information document request, or IDR, enforcement process for taxpayers who are unable, due to the COVID-19 pandemic, to respond timely to an IDR.[9]

The memorandum does not explain what it means by “due to COVID-19 pandemic.” We believe the memorandum will be interpreted broadly to include taxpayers who cannot respond due to health issues, work place shut downs, inability to reach IRS employees with the requested information, and inability to retrieve information from the workplace.

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.

In our experience, taxpayers will not need to invoke this formal announcement to secure additional time to respond an IDR. We suspect that most auditors understand that taxpayers will need extra time to make responses during the COVID-19 pandemic and will be willing to grant extensions.

If taxpayers are dealing with an auditor who is unwilling to make an extension, they should remind the auditor of the LB&I’s suspension of the IDR enforcement process and request to speak with a manager.

8. IRS Accepting Digital Signatures

Effective March 30, and until July 15, 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.[10]

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 (i.e., 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 temporary rule does not apply to documents that are filed with the IRS, such as tax returns, although many tax returns may be electronically filed under current procedures.

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 e-fax and its other established secured messaging systems.[11] 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. The rules are in effect until July 15, 2020.

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.

It is always a good practice for taxpayers to retain copies of all documents sent to the auditor and the same is true for emails. Taxpayers should save a copy of all emails, with attachments, sent to the IRS. Taxpayers should request the auditor to confirm receipt of all attachments and retain that email as well.

10. Appeals Conferences Continuing Via Phone and Video

Appeals conferences will continue, but without face-to-face conferences.[12] Given the appeals office's 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 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.[13]

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 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. We are all in this together and we expect that patience and cooperation will be the norm as we recover from the COVID-19 pandemic.

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[1] See IRS News Release IR-2020-59 (Mar. 25, 2020); IRS Mem. LB&I-04-0420-009 (Apr. 14, 2020).

[2] IRS News Release IR-2020-59 (Mar. 25, 2020).

[3] IRS Mem. LB&I-04-0420-009 (Apr. 14, 2020).

[4] IRS News Release IR-2020-59 (Mar. 25, 2020).

[5] IRS News Release IR-2020-59 (Mar. 25, 2020); IRS Mem. LB&I-04-0420-009 (Apr. 14, 2020).

[6] IRS website, "Temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19," <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19> (last visited Apr. 22, 2020).

[7] IRS Mem. LB&I-04-0420-009 (Apr. 14, 2020).

[8] IRS Notice 2020-23, 2020-18 I.R.B. __.

[9] IRS Mem. LB&I-04-0320-0007 (Mar. 25, 2020).

[10] IRS Mem. NHQ-01-0320-0001 (Mar. 27, 2020).

[11] IRS Mem. NHQ-01-0320-0001 (Mar. 27, 2020).

[12] IRS News Release IR-2020-59 (Mar. 25, 2020).

[13] See IRM 8.6.1, Material Changes (Sept. 25, 2019).