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Collection

Tax Collection and the Coronavirus: What Happens After the Pandemic?

By Giovanni V. Alberotanza and Michael J. March*

I. Introduction

The coronavirus (“COVID-19”) has touched all our lives in a profound way. For the first time, we are experiencing stay in place orders, mandatory closing of non-essential businesses and extended periods of time in quarantine. The immediate effects of COVID-19 are felt in our daily lives. However, the secondary and tertiary effects of the virus are still being discerned. As a result, the nation is waiting for guidance on how to properly respond to a pandemic.

Fortunately for individuals affected by COVID-19, the Internal Revenue Service (“the Service”) launched its People First Initiative (“the Initiative”).¹ The Initiative provided a wide range of relief available for individuals until July 15, 2020. A partial list of relief offered by the Initiative includes the following.

1. Installment Agreements

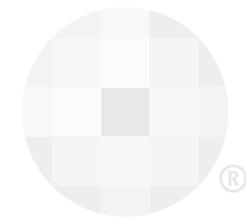
For taxpayers under an existing installment agreement, payments due between April 1 and July 15, 2020 are suspended.² Moreover, the Service will not default any installment agreements during this time period.³ However, interest will continue to accrue on any unpaid balance.⁴

2. Offer in Compromise

The Service allowed until July 15, 2020 to provide any requested additional information to support a pending Offer in Compromise (OIC).⁵ Additionally, the Service will not close any pending OIC request before July 15, 2020.⁶ Taxpayers also have the option to suspend all payments on accepted OICs until July 15, 2020.⁷ Finally, the Service will not default an OIC for taxpayers who are delinquent in filing their annual tax return for tax year 2018.⁸

3. Field Collection Activities and Correspondence Audits

Liens and levies initiated by field revenue officers are suspended until July 15, 2020.⁹ Revenue officers will still pursue high-income non-filers and perform other similar activities.¹⁰ However, the Service will generally not start any new field office



and or correspondence examinations unless the Service determines a taxpayer has a statute of limitations issue.¹¹

4. Passport Certification to the State Department

The Service will suspend new certifications to the Department of State for taxpayers who are “seriously delinquent” during this period.¹² Moreover, the Service will not forward any new delinquent accounts to debt collectors before July 15, 2020.¹³

II. What Happens When the Initiative Expires on July 15, 2020?

Relief provided by the Initiative is set to expire on July 15, 2020.¹⁴ Any taxpayers who have deferred installment agreement payments, offer in compromise payments, or a seriously delinquent tax debt will be forced to rectify this issue when the Initiative ends. However, what happens if the economic effects of COVID-19 outlast the Initiative’s end date? Will the Service default installment agreements, offer in compromises, and remit a large quantity of certifications of taxpayer’s debt as seriously delinquent? The answer is most likely, yes.

Generally, if taxpayers do not resume their normally scheduled payments, agreements will default and collection activity will ensue. This is not some type of retribution by the Service but rather a result of the volume of agreements and payments the Service is required to process each day. There are simply not enough employees at the Service to personally monitor every installment agreement, offer in compromise, or seriously delinquent tax debt. More likely, a computer program will systematically determine whether any agreements should be defaulted.

Realizing the quantity of correspondence and potential issues that will be created on July 15, the Service will hopefully ease individuals and businesses back into the collection process with a series of notices before enforced collection activity occurs. The warning notices would be useful to provide adequate time and information for taxpayers to restart their installment agreement or renegotiate previous agreements. However, again, based on the volume of information the Service processes each day, this may not be possible.

Fortunately for taxpayers, generally, when the Service defaults an installment agreement or other contractual obligation, taxpayers receive rights to file a Collection Appeal Request.¹⁵ It is therefore essential for tax

practitioners to understand taxpayer’s rights and the procedural steps required to effectively advocate for their clients.

III. Collection Appeal Request

Pursuant to 26 USC §7122(e) and IRM 5.1.9.1.1 (Aug. 30, 2018), taxpayers have the right to appeal the Service’s rejections, proposed and actual terminations, and modifications of installment agreements. In 1996, the Service implemented the Collection Appeals Program (“CAP”) to facilitate these requests.¹⁶ This program provides administrative rights for certain collection actions.¹⁷ Originally, appealable actions were limited to liens, levies, and seizures.¹⁸ However, in 1997, terminated installment agreements were added to the program through the Taxpayer Bill of Rights 2, enacted in July of 1996.¹⁹

Generally, taxpayers have thirty days from the date of rejection, modification, or default of an installment agreement to file a CAP request.²⁰ CAP requests are completed using the Service’s Form 9423. Form 9423 requests basic information about the taxpayer, as well as the period and amount of taxes due. More importantly, Form 9423 requests an explanation of why the taxpayer disagrees with the collection activities taken by the Service. Before a taxpayer can file a CAP request, they must discuss the problem with the Collection manager.²¹

Any discussions with a collection manager should include the proposed modification of the agreement, termination proposals, and any reasons why an agreement should not be defaulted.²² By policy, collection action is suspended while lien, levy and seizure CAP cases are in Appeals.²³ Collection may continue enforcement action if it is believed that withholding the action would put collection of the tax liability at risk, the taxpayer only raises frivolous issues, or the taxpayer is only seeking to delay the collection process.²⁴ However, levy actions pursuant to installment agreement rejections and terminations is generally prohibited by statute when a CAP request has been filed.²⁵

Filing a CAP request is not available in all circumstances. Several collection and examination issues have separate appeal procedures.²⁶ Specifically, trust fund recovery penalties, offers in compromise, penalty appeals, jeopardy levies, audit reconsiderations and claims for refund or requests for abatement of tax have different appeal procedures.²⁷

Finally, if a resolution cannot be obtained through a CAP request, then a formal dissent can be filed.²⁸ The

formal dissent must clearly outline the nature of the dissent and supporting rationale, specific facts not adequately considered by appeals, and the applicable law upon which relief should be provided.²⁹

IV. Filing a New Installment Agreement Request

In certain circumstances, it may be unreasonable for a taxpayer to continue with their previously accepted installment agreement or offer in compromise. This will be especially relevant considering the effects COVID-19 has had on the economy and businesses. As a result, a taxpayer may default on an existing agreement and subsequently request a new partial payment installment agreement depending upon their circumstances.³⁰

To request a partial payment installment agreement, the taxpayer must submit a collection information statement.³¹ Depending on the taxpayer's facts and circumstances, the taxpayer may need to complete the Service's

Form 433-A as an individual or Form 433-B on behalf of a business.³² In help completing the financial statements, tax practitioners should consult IRM 5.15.1 and the local and national guidelines provided on the Service's website. Just as important, tax practitioners should consider the taxpayer's collection statute expiration date ("CSED") when requesting an installment agreement or other collection alternative.

V. Conclusion

The Service's deference in helping taxpayers during the pandemic has been commendable. However, questions remain on how the Service will resume operations once the Initiative concludes. Specifically, how the Service will process such a large quantity of potential installment agreement defaults and modifications, OIC payments, and seriously delinquent tax debts. As a result, it is crucial, now more than ever, that tax practitioners know their client's rights and how to successfully advocate to obtain the best possible results.

ENDNOTES

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¹ "IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program", March 25, 2020, www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ As of the date this article was written no extension of the Initiative had been provided.

¹⁵ This is a generality as explained *supra*. Depending on the type of issue the taxpayer is facing a different appeal procedure may be warranted.

¹⁶ IRM pt. 8.24.1.1 (Mar. 9, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ IRM pt. 8.24.1.3.3(1) (Mar. 9, 2019). Please note, for seizure actions taxpayer have ten days to appeal under CAP from the date the notice of seizure is provided to the taxpayer or left at his or her usual abode or place of business. See IRM pt. 5.1.9.4.2(3) (Aug. 30, 2018).

²¹ IRM pt. 8.24.1.3(8) (Mar. 9, 2019).

²² *Id.*

²³ IRM pt. 8.24.1.3(10) (Mar. 9, 2019).

²⁴ *Id.* See also IRM pt. 5.1.9.4.4(4) (Aug. 30, 2018).

²⁵ 26 USC §6331(k)(2). Unless collection of the tax is in jeopardy.

²⁶ IRM pt. 8.24.1.3.2(1) (Mar. 9, 2019).

²⁷ *Id.*

²⁸ IRM pt. 5.1.9.5.4 (Aug. 30, 2018).

²⁹ IRM pt. 5.1.9.5.4(4) (Aug. 30, 2018).

³⁰ In this scenario it may be possible to modify the installment agreement through a CAP request. However, the purpose of this analysis is to offer a different solution to the problem. Moreover, a new partial pay installment agreement request could benefit certain taxpayers as well as provide additional time for economic recovery.

³¹ IRM pt. 5.14.2.2.1(1) (Apr. 26, 2019).

³² *Id.*

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