August 28, 2020

The Honorable Charles P. Rettig
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: Concern with IRS Mail Backlogs and Notices

Dear Commissioner Rettig:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. The TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the view or policies of the TXCPA.

The IRS reported that as of mid-June it had an estimated backlog of 11 million pieces of mail to open and process.[1] This unread mail includes correspondence, information returns, payment vouchers/payments and millions of tax returns. We understand that, at one point this summer, this backlog increased to approximately 12 million[2] and may in fact be even greater now with another possible surge after July 15 when delayed returns were due. In addition to incoming mail, according to National Taxpayer Advocate Erin Collins, outgoing mail was backlogged, including approximately 20 million payment-due notices that were computer generated and have now been mailed late, many with due dates already passed.[3] Some of these notices included an insert stating that the due date had been extended.[4] But many taxpayers may not pay attention to the insert and, for those who did, this is confusing given the due date in the "official" IRS notice.

We understand that the IRS, like everyone else, is struggling with the coronavirus pandemic. We wish the IRS well and offer some suggestions to assist with the backlog and improve taxpayer service.

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[1] *See* Forbes, *IRS Faces Huge Backlog Of Unopened Mail As Workforce Returns* (June 19, 2020), https://www.forbes.com/sites/kellyphillipserb/2020/06/19/irs-faces-huge-backlog-of-unopened-mail-as-workforce-returns/#60f50d2e30bd.

[2] *See* Letter from U.S. House Ways and Means Chairman Richard E. Neal to IRS Commissioner Charles P. Rettig (Aug. 19, 2020), https://waysandmeans.house.gov/media-center/press-releases/chairman-neal-calls-irs-stop-sending-tax-bills-taxpayers-until-agency#:~:text=SPRINGFIELD%2C%20MA%E2%80%94House%20Ways%20and,by%20the%20COVID%2D19%20pandemic.

[3] *See* Taxpayer Advocate Service Blog: *Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don't Panic, See Inserts Providing Extended Due Dates,* https://taxpayeradvocate.irs.gov/news/nta-blog-mailbox

[4] *See* id.

1. We strongly recommend the IRS suspend sending all notices until it can clear its mail backlog and is sure that the notices are correct. When all the mail is opened, many of the notices would not have been necessary and responding to erroneous notices will add to the IRS mail backlog. For example, a taxpayer who filed electronically before April 15 and mailed a check would likely receive a payment due notice in May when the check is sitting in backlogged mail. Similarly, where a partnership filed a paper extension on March 15 and then e-filed in May, a late-filed return notice would likely be generated. In this regard, we agree with U.S. House Ways and Means Committee Chairman Richard E. Neal (D-MA) who recently requested that the IRS temporarily pause sending notices to taxpayers impacted by the pandemic until the IRS backlog has been reduced to pre-pandemic levels.[5]

   We appreciate the notice issued by the IRS on Aug. 21, 2020, stating that the IRS has suspended mailing of Notices CP501, CP503 and CP504.[6] However, we are concerned this will not be enough. There are many other notices the IRS issues that may not properly reflect mail sitting in the IRS backlog, including but not limited to LT11/1058, *Final Notices of Intent to Levy*; CP508C, *Passport Denial Letter*; CP523/LT2975, *Defaulted Installment Agreement*; Letter 1153, *Trust Fund Recovery Penalty*; Letter 3172, *Notice of Federal Tax Lien*; Letter 3174, *Tax Due Notice*, among others. There are also notices requesting specific taxpayer action that may be similarly sitting in the IRS mail backlog, such as LTR 729, *Request for Delinquent Returns*. Some notices may adversely affect particularly vulnerable persons, such as CP91/CP298, *Intent to Seize Social Security Benefits*. The IRS cannot assume taxpayers will be able to resolve erroneously issued notices promptly given the current difficulty in contacting anyone at the IRS in light of the pandemic. We believe the best approach is to stop all notices until the IRS can determine what is sitting in its backlog.

2. We also recommend that when the IRS resumes sending notices, it considers delaying them for at least a month after the related paper documents are processed rather than the two-week period currently in effect. This was an occasional problem even before the pandemic with notices sent although payments were mailed on the same day a Form 1041 was filed electronically.

3. We suggest that the IRS instruct all personnel who handle mail to retain the envelope using the postmark to properly credit payments when checks were mailed in accordance with the timely mailed, timely filed rule of Section 7502. For some payments that are not covered by 7502, such as late payments, a clear and fair rule should be applied like crediting the payment as received by the IRS three days after the postmark. For other taxpayer correspondence, the postmarked envelope would provide evidence of when it was sent and that date should be recognized as the date of receipt by the IRS.

4. Where a taxpayer has not received a notice due to outgoing mail backlogs, we further recommend the IRS generously permit taxpayers to show delayed receipt of the notice as a reasonable cause for abating any related penalty. In addition, where a taxpayer applies for first-time abatement penalty relief for a penalty notice that was sent erroneously by the IRS due to the mail backlog, this should be processed without it counting as the taxpayer's first-time application.

5. Finally, if procedures are not changed, IRS personnel should be instructed to pay particular attention to mailing dates on envelopes they receive before applying any penalties.

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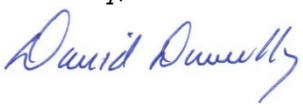
[5] *See* id., letter from House Ways and Means Chairman to IRS Commissioner (Aug. 19, 2020).
[6] *See* IRS Notice: *IRS Temporarily Stops Mailing Notices to Taxpayers With Balances Due* (Aug. 21, 2020).

We understand that the IRS is working hard in difficult circumstances to serve taxpayers. We support your efforts and thank you for considering our comments. We would be pleased to discuss them further if you or your staff members believe it would be helpful. Please feel free to contact me at 832-333-7431 or at ddonnelly@cricpa.com or contact our TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tscpa.net.

Sincerely,



David P. Donnelly, CPA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

cc: The Honorable David J. Kautter, Assistant Treasury Secretary for Tax Policy
Ms. Erin M. Collins, National Taxpayer Advocate, Internal Revenue Service
Ms. Amalia C. Colbert, Director, Taxpayer First Act Office, Internal Revenue Service