

Shutdown Cranking Up Anxiety, Uncertainty For Taxpayers

By **Alex M. Parker**

Law360 (January 14, 2019, 7:17 PM EST) -- The partial government shutdown is forcing multinational corporations, domestic taxpayers and practitioners into a tricky guessing game as deadlines approach and automated collection notices are still released, without anyone at the Internal Revenue Service to discuss or negotiate with.

The IRS has apparently ceased all audits during the shutdown, which began on Dec. 22, but practitioners say taxpayers must continue to ensure they take the right steps to show they made a good-faith effort to comply with all timetables.

“There’s no one to call at the IRS to put holds on collection activity,” said Shamik Trivedi, a senior manager with Grant Thornton’s Washington national tax office. “What you do is you’re taking a shot in the dark and hoping that someone reads it in time before things progress to the next level.”



The partial shutdown of the federal government is in its fourth week. Snow continued to fall on the White House on Sunday. (AP)

Most government agencies began to furlough nonessential employees on Dec. 22, after President Donald Trump and the U.S. Congress failed to reach an agreement to extend appropriations through the new year. The lapse has entered its fourth week, and neither side shows any sign of softening its stance or finding common ground.

The IRS is operating with only 12 percent of its workforce and has halted all audits and exams, as well as taxpayer services and the issuance of nonautomated collection notices, according to the U.S. Department of the Treasury’s shutdown contingency plan. The plan also had called for Treasury to halt tax refunds, but the Office of Management and Budget has announced it would recall federal employees, if necessary, to process refunds for the upcoming tax season.

But practitioners said it appears that automated collection notices are still being issued, even though there’s no IRS personnel to follow up with on them. That can leave corporations and individuals with a tricky choice — pay a tax they might want to contest, or risk a penalty or escalation for a blown deadline?

"Although not the fault of the IRS or its employees, the IRS computers still send notices with required response dates, such as about liens or levies, that are alarming to our clients," said Mark Matthews, a member of Caplin & Drysdale Chtd. in Washington, D.C., and a former IRS deputy commissioner. "Because we can't reach IRS employees, there is nothing we can do really, other than assure the clients that no such actions are likely until the shutdown is over."

Caution and erring toward due diligence is the safest route in a scenario where there's likely to be a lot of confusion when the government does finally return, Trivedi said.

"I think in a situation like this, you have to remain vigilant of those deadlines," he said. "I've been advising clients to respond, make an effort to contact the IRS and just document for your own files that you made efforts in that time, and if you failed you can at least show you made your own diligence to respond."

Jennifer Breen, a partner at Morgan Lewis & Bockius LLP in Washington, D.C., who focuses on controversy and audit, also said her clients have received apparently automated notices since the shutdown began.

"We're advising our clients: Just because the government is shut down doesn't mean that we are," Breen said. "To the extent we have deadlines with the service, we're committed to meet with them."

Breen said she is also preparing for the government's reopening — when IRS agents will have to deal with piles of submissions that have accumulated during the downtime, as well as a host of scrambled timetables from new notices or halted exams.

"We're just looking for ways that we can get all of the filings or the submissions ready, so that when the government opens the delay is not on us, we're ready to re-engage with them as quickly as possible," she said. "I think we're going to have to be patient and flexible with the government when it reopens."

Matthews said the shutdown, in some respects, feels like a continuation of problems that have plagued the IRS over years of budget cuts and staff reductions.

"It's just an exacerbation of the problem of insufficient resources in tax enforcement," he said. "It was sort of already bad enough, and this just makes it worse."

--Editing by Tim Ruel and Neil Cohen.