

It's Not Too Early to Start Planning for the Next Shutdown

by Nathan J. Richman

Practitioners may want to start planning with their IRS counterparts for what to do about things like submission deadlines and scheduled meetings if the government shuts down again February 15.

With only three weeks until the continuing resolution expires, IRS personnel are already contacting practitioners to resume work halted by the government shutdown, Jennifer Breen of Morgan, Lewis & Bockius LLP said January 28 during a webcast sponsored by the American Bar Association Section of Taxation. Breen said the IRS stopped work on the requests she had made for technical advice memoranda and letter rulings. For those processes that included scheduled meetings or information submissions that were affected by the shutdown, the IRS attorneys handling the requests have offered an additional 21 days to reschedule, she said.

Practitioners should be talking to IRS examiners and Appeals officers 'about not only how are we going to reengage now that they're back, but just put some plans in place for the possibility that another shutdown could occur,' Breen said.

"However, between now and February 15, we only have 18 days, so I think that there is going to be a lot of push to move those sorts of projects along as quickly as we can," Breen said. Practitioners should be talking to IRS examiners and Appeals officers "about not only how are we going to reengage now that they're back, but just put some plans in place for the possibility that another shutdown could occur," she said.

Connecting With the IRS

Those reengagement plans could include what the taxpayer or representative should do with planned submissions such as responses to information document requests during an audit, Breen said.

"Should we have held that, or should we have gone ahead and mailed it in? Would they prefer

that it be faxed so that it is waiting when they come back, or will the fax machine potentially run out of paper?" Breen asked. "Should we just use email if we could, or should we just hold it and wait [until the shutdown ends] and get directions?"

Meetings present another issue for practitioners to address, particularly those planned long before the shutdown that require travel by either the practitioners or their taxpayer clients, Breen said. "At what point, if the government is shut down and we have a meeting next week, do I go ahead and assume that that meeting is going to be canceled if I have travel arrangements that are going to be made?" she asked. Establishing times for practitioners to assume that meetings will be canceled would allow minimization of both costs and wasted preparation time, Breen said.

These sorts of reengagement plans should extend to practitioners with matters handled by the Justice Department if the case is at a district court or the Court of Federal Claims, Breen said. Rosemary Sereti of Deloitte Tax LLP said those plans should also extend to practitioners with open Freedom of Information Act requests. The IRS may ask for extensions to respond to those requests as part of coming out of the shutdown, so a conversation with someone at the agency about the status of an existing FOIA request would be a good idea, she said.

Tax Court Closing Cost

The Tax Court closed December 28, 2018, because of the shutdown and reopened January 28. It had canceled three sets of trial sessions starting January 28, February 4, and February 11. "The February 25, 2019, trial sessions will proceed as scheduled," according to the Tax Court's website.

Often, some of the most important work by the IRS Office of Appeals comes in the months after a docketed case is transferred for trial, Breen said. That means that even though the Tax Court is resuming operations, "there was important appeals work that should have been taking place last month that hasn't," leaving only a few weeks to engage with IRS Appeals to settle before trial, she said.

Bryan Camp of the Texas Tech University School of Law highlighted the uncertainty facing taxpayers whose deadlines to file petitions fell during the shutdown, as the Tax Court considers the application of the inaccessibility rule from *Guralnik v. Commissioner*, 146 T.C. 230 (2016). In that case, the Tax Court held that while equitable tolling couldn't save a petition received late because of a snow-related government closure, the rule on computing filing time for when the court was inaccessible could.

Staffing Effects

Sereti, former deputy commissioner of the IRS Large Business and International Division, pointed out how the shutdown could affect personnel levels at the already understaffed tax agency.

Sereti said she thinks the IRS "planned to hire a significant number of employees," including 3,000 for the Small Business/Self-Employed Division and 400 to 500 for LB&I. "Those plans probably didn't materialize to the point of bringing people on board" because the hiring process, which presumably started in November, was likely interrupted by the shutdown, she said.

And the end-of-year shutdown coincided with retirement season at the IRS, Sereti noted. "I don't see the IRS having more staff now than they did before the shutdown," she said. ■