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April 6, 2020

Hon. Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Collections-Related Relief in Response to COVID-19

Dear Commissioner Rettig:

Enclosed please find questions and recommendations regarding collections-related relief in response to the COVID-19 crisis. These comments are submitted on behalf of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss these comments with you or your staff.

Sincerely,

Tom Callahan
Chair, Section of Taxation

Enclosure

cc: Hon. David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Jeffrey Van Hove, Senior Advisor, Office of Tax Policy, Department of the Treasury
Hon. Michael J. Desmond, Chief Counsel, Internal Revenue Service
Sunita Lough, Deputy Commissioner, Services and Enforcement, Internal Revenue Service
Eric Hylton, Commissioner, Small Business/Self Employed Division, Internal Revenue Service
Darren Guillot, Deputy Commissioner Collection and Operations Support, Small Business/Self-Employed Division, Internal Revenue Service
Frederick Schindler, Director, Collection Policy, Small Business/Self Employed Division, Internal Revenue Service

**AMERICAN BAR ASSOCIATION
SECTION OF TAXATION**

**COMMENTS ON TAX COLLECTION-RELATED
RELIEF IN RESPONSE TO THE COVID-19 EMERGENCY**

These comments (“**Comments**”) are submitted on behalf of the American Bar Association Section of Taxation (the “**Section**”) and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Lawrence A. Sannicandro, Chair of the Committee on Tax Collection, Bankruptcy, and Workouts. Substantive contributions in drafting these Comments were made by: Jairo G. Cano, Caroline D. Ciralo, Jami Coleman, James Creech, Jeffrey Dirmann, Elizabeth Maresca, Guinevere Moore, Eli S. Noff, Wm. Robert Pope, Rachael Rubenstein, Mary Slonina, Christine Speidel, Cory Stigile, and Paul Tuttle. These Comments were reviewed by Lisa Zarlenga of the Section’s Committee on Government Submissions and by Eric B. Sloan, the Section’s Vice Chair for Government Relations.

Although members of the Section may have clients who might be affected by the federal tax principles addressed by the Comments, no member who has been engaged by a client (or who is a member of a firm or other organization that has been engaged by a client) to make a government submission with respect to, or otherwise to influence the development or outcome of, one or more specific issues addressed by the Comments has participated in the preparation of the portion (or portions) of the Comments addressing those issues. Additionally, while the Section’s diverse membership includes government officials, no such official was involved in any part of the drafting or review of the Comments.

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Date: April 6, 2020

Background

On March 13, 2020, President Trump issued Proclamation 9994 declaring the ongoing Coronavirus Disease 2019 (“**COVID-19**”) pandemic a national emergency under, among other authorities, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “**Emergency Declaration**”).¹ The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. § 7508A(a).” On the basis of that grant of authority, the Internal Revenue Service (the “**Service**”) postponed the due date for filing certain federal income tax returns and making certain federal income tax payments from April 15, 2020 to July 15, 2020.²

On March 25, 2020, the Service released its “**People First Initiative**” as part of its ongoing effort to provide relief to taxpayers impacted by COVID-19. The People First Initiative grants taxpayers further relief in addition to the administrative guidance extending certain tax filing and tax payment deadlines. We applaud the Treasury Department (“**Treasury**”) and the Internal Revenue Service (the “**Service**”) for their efforts to assist taxpayers who have been affected by COVID-19. As noted in our prior comments submitted on April 3, 2020,³ and discussed in greater detail below, we recommend that additional relief be extended to affected taxpayers with respect to the period beginning on the date on which the Emergency Declaration was issued, March 13, 2020, and ending on July 15, 2020 (the “**Suspension Period**”). These Comments discuss the specific relief recommended on a topic-by-topic basis.

Recommendations

I. Relief from Enforced Collection Action

Tax collection-related relief is necessary with respect to cases before the Collection Division, the Service’s Independent Office of Appeals (“**Appeals**”), and the Service’s Office of Chief Counsel (“**Counsel**”). The specific relief we recommend with respect to the Service’s enforced collection activities are set forth below.

A. Defer Future Filings of All Notices of Federal Tax Liens and the Issuance of All Final Levy Notices Throughout the Suspension Period

IR 2020-59 provides that liens and levies initiated by field revenue officers, as well as new systemic liens and levies, will be suspended through July 15, 2020. However, IR 2020-59 also provides that field collection activities will pursue liens, levies, and seizures “where warranted.” We applaud the Service for recognizing the general importance of suspending lien filings and levies through July 15, 2020, but, as discussed below, we recommend that the suspension be broadened.

¹ Proclamation No. 9994 (Mar. 13, 2020), 85 Fed. Reg. 15337, 15337-15338 (Mar. 13, 2020).

² Available at <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>.

³ <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/040320comments.pdf>

With the widespread disruption in commercial activities, we believe it is reasonable to anticipate that (a) taxpayers and/or their representatives may not receive (or be able to check) mail sent to an office or a P.O. box, (b) mailing documents poses health risks for both taxpayers and government employees during the ongoing pandemic, (c) some taxpayers may lack the ability to leave their homes to mail timely collection due process (“**CDP**”) requests in response to a notice of federal tax lien (“**NFTL**”) or a final notice of intent to levy (“**Final Levy Notice**”), (d) taxpayers temporarily abroad may be precluded from receiving mail (like a NFTL or Final Levy Notice) from the United States or from sending mail (like a request for a CDP hearing) into the United States, and/or (e) affected taxpayers may be ill and unable to respond to the NFTL or the Final Levy Notice. In addition, we note that, on March 27, 2020, the IRS announced that due to staffing limitations, various telephone hotlines would be closed until further notice. Although this measure is entirely understandable, it has increased the difficulty in reaching Service employees. We understand that some practitioners have called the Service with respect to taxpayers in collection and have (a) received an automated message that “hold time too excessive,” and (b) had the call automatically disconnected. Other practitioners have been altogether unable to reach Priority Practitioner Services (“**PPS**”) because the calls “ring out.”

For these reasons, we recommend that the “where warranted” exception be replaced with jeopardy-type language found in section 6331 throughout the Suspension Period.⁴ The most significant benefits of a jeopardy standard are that (a) taxpayers throughout the United States will be treated similarly, and (b) taxpayers will know when enforced collections will proceed and will have a clearly defined means of challenging any such collection activity.

If this recommendation is not adopted, we recommend, in the alternative, that the Service (a) impose a 90-day hold on the future filing of all NFTLs or the issuance of all Final Levy Notices, except to the extent the Service determines that the collection of tax would be in jeopardy; and (b) only after that 90-day period solicit payment from taxpayers, provided collection personnel advise taxpayers medically or financially affected by COVID-19 of the collection alternatives available to them.

If neither our primary nor alternate recommendation is adopted, we respectfully recommend that clarification be provided with respect to what circumstances will warrant a NFTL being filed or a Final Levy Notice being issued.⁵

B. Rescind All NFTLs and Final Levy Notices Issued Before or During the Suspension Period

For the same reasons that we recommend suspension of new collection activities during the Suspension Period, we also recommend suspension of existing collection activities. Specifically, with respect to any notice issued pursuant to section 6320(a) (with respect to the filing of a NFTL) or section 6330(a) (with respect to the issuance of a Final Levy Notice) for

⁴ Unless indicated otherwise, all “section” references are to the Internal Revenue Code of 1986, as amended (the “**Code**”), and all “Treas. Reg. §” references are to the Treasury regulations promulgated (or proposed) under the Code, in each case as in effect as of the date of these Comments.

⁵ As used in these Comments, the terms “final notices of intent to levy” and “Final Levy Notice” refer to the notice required to be sent by section 6330.

which the 30-day period to request a hearing with Appeals has not expired, we recommend that the Service rescind that notice pursuant to section 6330. The Service has previously recognized its authority to rescind a Final Levy Notice before the expiration of the 30-day period to request a hearing with Appeals in Chief Counsel Memorandum POSTN-108949-10.⁶ The reasoning in Chief Counsel Memorandum POSTN-108949-10 applies equally to the filing of a NFTL because section 6330 is made applicable to a lien review proceeding pursuant to section 6320(c). This action is appropriate, we believe, because the Service's suspension for new systemic liens and levies does not affect NFTLs and Final Levy Notices that were issued before (or not in keeping with the provisions of) the People First Initiative.⁷ To ensure that all taxpayers who receive a NFTL filing or a Final Levy Notice are treated consistently, we recommend that the Service rescind all NFTLs and Final Levy Notices issued before or during the Suspension Period for which the 30-day period to request a hearing with Appeals has not expired.

Alternatively, for NFTLs or Final Levy Notices issued by the Service during the Suspension Period for which the 30-day period to request a hearing with Appeals has not expired, the Service could extend the time within which to file Form 12153 (Request for a Collection Due Process or Equivalent Hearing) and offer taxpayers collection due process rights, including the opportunity to file a petition before the Tax Court until the later of (a) the first business day following 30 days after the expiration of the Suspension Period (*i.e.*, until August 17, 2020), or (b) 30 days after the date of the NFTL or Final Levy Notice.

Finally, we recommend that Treasury and the Service consider increasing the threshold for lien filing from the current \$10,000 to \$25,000 or even \$50,000 so that the NFTLs are less likely to fall on taxpayers with relatively small balances while allowing the Service to continue to protect itself with respect to those individuals who have significant tax liabilities. We note that because the Tax Court is closed, taxpayer petitions for redetermination of collection actions after CDP appeals and requests for innocent spouse relief will not be processed. Raising the threshold for recording NFTLs will reduce the backlog of petitions and it is also an equitable response to taxpayers' inability to access judicial review.

C. Release Wage, Social Security, and Other Levies and Suspend Garnishments During the Suspension Period

Although, as noted, IR 2020-59 provides that liens and levies initiated by field revenue officers and new systemic liens and levies will be suspended, it does not provide guidance regarding existing levies and garnishments.

We believe that levies and garnishments issued during the Suspension Period will cause an undue hardship on taxpayers, particularly individuals and small businesses impacted directly

⁶ In Chief Counsel Memo. POSTN-108949-10 (May 28, 2010), *available at* https://www.irs.gov/pub/lanoa/pmta-2010_061.pdf, the Service concluded that it lacks the authority to rescind a Final Levy Notice for which the 30-day period to request a hearing with Appeals has expired. Nevertheless, these Comments propose separate relief for taxpayers against whom a NFTL has been filed and/or a levy is ongoing and the taxpayer is not able to challenge those determinations administratively before the Service. *See* Section I.C. (levies) and Section I.E. (notices of federal tax lien).

⁷ We are aware of a taxpayer who received a systemic Final Levy Notice after the release of the People First Initiative.

by the COVID-19 emergency. Additionally, if a release of a levy is needed, taxpayers and practitioners may be unable to reach a Service employee through PPS, or by other means, due to the closures of Service call centers. Therefore, affected taxpayers would have no means of challenging the ongoing levy.

For this reason, we suggest that the Service suspend all ongoing levies and garnishments of any type throughout the Suspension Period, including levies against wages and Social Security benefits. Although we considered whether the release of levies and garnishments should be made available to all taxpayers or limited to those taxpayers who have certain qualifying medical conditions or household income under certain specified thresholds, we believe that “line drawing” is likely to leave adversely affected taxpayers without the necessary relief and ultimately will require unnecessary (and perhaps unavailable) resources to be spent by taxpayers, their advisors, and the Service determining whether the relief is available. Therefore, we recommend that the Service impose a hold on *all* levies and garnishments of any type throughout the Suspension Period. We also recommend that the Service educate taxpayers about the options available to them regarding levies and garnishments if they have been medically or financially affected by COVID-19.

D. Suspend Future Collection Notices Throughout the Suspension Period

IR 2020-59 states: “[i]n addition to compliance activities and examinations, the IRS encourages taxpayers to respond to any other IRS correspondence requesting additional information during this time *if possible*” (emphasis added). For the reasons discussed above, we recommend that the Service suspend all collection notices at least until 30 days after the expiration of the Suspension Period. Additionally, except as otherwise recommended in these Comments, we recommend that all deadlines set forth in previously issued collection notices be extended for the duration of the Suspension Period plus an additional 30 days. The additional 30 days is appropriate for taxpayers (and their representatives) to sort through existing mail and for tax advisors to triage client files to determine what has occurred to date and an appropriate course of action.

E. Adopt and Implement Procedures to Promptly Subordinate NFTLs Filed Before the Suspension Period Against Certain Small Businesses and Homeowners

We suggest that the Service adopt and implement procedures pursuant to section 6325(d) to permit qualifying taxpayers to have any NFTL that was filed before the commencement of the Suspension Period subordinated by the Service. By way of background, the Service may issue a certificate of subordination of an NFTL upon any part of property subject to the lien under section 6321 if the appropriate Service employee determines that the subordination of the lien will facilitate the collection of tax.⁸ Financing costs for small businesses and mortgage rates for homeowners are low by historical standards. An existing NFTL invariably prevents small business owners and homeowners from taking advantage of these historically low interest rates. The subordination of an NFTL may enable small businesses to qualify for new business debt or for homeowners to refinance historical debt, and should facilitate the ultimate collection of tax.

⁸ Treas. Reg. § 301.6325(d)(2)(i).

For this reason, we recommend that the Service implement streamlined procedures to permit eligible taxpayers to have any NFTL that was filed before the commencement of the Suspension Period subordinated by the Service.⁹

F. Installment Agreements

1. Clarify the Relief Given in IR 2020-59 with Respect to Installment Agreements

IR 2020-59 states that installment payments due between April 1, and July 15, 2020, for an existing installment agreement “are suspended.” The next sentence of IR 2020-59, however, states that “[t]axpayers who are currently unable to comply with the terms of an Installment Payment Agreement, including a Direct Debit Installment Agreement, *may* suspend payments during this period if they prefer” (emphasis added). We recommend that the Service clarify whether payments due under a direct debit installment agreement, which is a type of installment agreement, are suspended automatically or whether taxpayers (or their representatives) must contact the Service to request suspension of the direct debit, and, if a request is required, how that request should be made. As we have noted, reduced Service staffing levels make it difficult to speak with a Service employee, and, for this reason, we recommend that the Service adopt the following clarifications and/or modifications to IR 2020-59:

- Automatically suspend: (a) *all* installment payments due between April 1, and July 15, 2020, without regard to whether the installment agreement is a “direct debit installment agreement,” a “streamlined installment agreement,” a “guaranteed installment agreement,” or a traditional “pay-as-you-go installment agreement”; and (b) all direct debit installment agreements until 30 days after the expiration of the Suspension Period (*i.e.*, until August 17, 2020);
- Adopt procedures for taxpayers who have direct debit installment agreements to request a return of a direct debit installment payment if the payment was automatically withdrawn during the time period in which collection was generally suspended for other taxpayers; and
- Mail letters and update the Service’s website as soon as is practicable to advise all taxpayers regarding installment agreements with respect to the suspension of installment payments, the impact such suspension has on the duration of the installment agreement, and what happens if the taxpayer has changed circumstances and can no longer make installment payments once the installment agreement resumes. Ideally, these letters would have the phone number for Taxpayer Advocate Service (“TAS”) or some other taxpayer assistance program,

⁹ We considered whether the Service should support debt issuances or debt restructurings generally by releasing all NFTLs or NFTLs under a certain dollar threshold (*e.g.*, \$100,000). Based on our review of the relevant legal authority, however, we are not certain that the Service possesses such broad authority once an NFTL has been filed. To the extent the Service concludes that it has that authority, whether under section 6325 or otherwise, then we support a broader approach during the Suspension Period as a complement to the subordination procedures suggested.

such as low-income taxpayer clinics, which taxpayers can contact for help in establishing a new payment amount or other collection alternative, if necessitated by the medical or financial effects of COVID-19, or otherwise.

2. Modify Installment Agreements

As reflected on Form 433-D (Installment Agreement), the standard terms of an installment agreement require a taxpayer to make each installment payment so that the Service receives it by an agreed-upon date. If the taxpayer does not make the monthly installment payment as agreed, then the Service may (but need not) terminate the installment agreement. The terms of Form 433-D also provides that the Service may modify the installment agreement if the Service's information shows that the taxpayer's ability to pay has significantly changed.

In this regard, we recommend that, in addition to suspending all installment payments (as discussed above), the Service reinstate installment agreements, without fee, beginning in the month following the end of the Suspension Period (*i.e.*, payments would resume in August 2020 if the Suspension Period ends in July 2020), such that taxpayers would begin making payments in accordance with the terms of their installment agreement as in effect immediately before the suspension, including accrued interest, with the first payment due beginning the month after the end of the Suspension Period.

We believe it would be helpful for the Service to specifically advise taxpayers who have been adversely affected by COVID-19 that they may be eligible for a modification of an existing installment agreement. This could be accomplished by updating the Service's website, by updating the Service's informational messages that are played while the taxpayer (or representative) is on hold, and/or by encouraging Service employees to educate taxpayers about modifications if the taxpayer (or a representative) mentions during a telephone conference, in-person visit, or other interaction that the taxpayer was affected by COVID-19.

3. Adopt Expanded and Universal Streamlined Filing Criteria to Make it Easier for Taxpayers to Obtain Installment Agreements

We believe it is reasonable to anticipate that one of the consequences of the COVID-19 emergency is that there will be an increase in tax returns filed by taxpayers without full payment. The Service currently has a program for "streamlined" and "expanded streamlined" installment agreements, as outlined on the Service's website and in the Internal Revenue Manual.¹⁰

In light of the COVID-19 emergency, we suggest that the Service modify the criteria for eligibility into "streamlined" installment agreement by extending the "expanded streamlined" installment agreement terms, thereby creating no distinction between a "streamlined" installment agreement and an "expanded streamlined" installment agreement. Additionally, we recommend that some of the criteria constraints of the "expanded streamlined" installment criteria be

¹⁰ See generally Service, *Streamlined and Expanded Installment Agreements*, <https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements> (last updated May 30, 2019); IRM 4.20.4.3 (10-4-2017); IRM 5.14.5.2 (12-23-2015). We note the IRM has not been fully updated to reflect the guidance and procedures listed on the more current Service's webpage, *Streamlined and Expanded Installment Agreements*.

removed. We therefore respectfully recommend the following criteria for a universal streamlined installment agreement program:

- Eligible taxpayers be defined to include either an individual, an out-of-business sole proprietor, an out-of-business taxpayer, or an in-business taxpayer who has an assessed balance of tax, penalties, and interest of less than \$100,000.
- Taxpayers should be eligible for a streamlined installment agreement regardless of which Service division the collection case originated. Therefore, for example, cases originating in SB/SE Campus Collection Operations, Taxpayer Assistance Centers, or Field Collection would all be eligible for a universal streamlined installment agreement.
- Taxpayer should not be required to submit a collection information statement, such as Form 433-A (Collection Information Statement for Wage Earners and Self-Employed Individuals), Form 433-B (Collection Information Statement for Businesses), or Form 433-F (Collection Information Statement).
- Taxpayers should not be required to pay a user fee to be accepted into the universal streamlined installment agreement program.
- The Service should extend the time during which the universal streamlined installment agreement may remain outstanding to 84 months, or the number of months necessary to satisfy the liability in full before the expiration of the collection statute of limitations, whichever is lower.
- The Service should defer a determination as to the filing of a NFTL.

G. Offers in Compromise

1. Relaxing the Rescission Rule

Generally, if a taxpayer fails to stay compliant with his or her tax filing or tax payment obligations, the Service may rescind an agreement to compromise a tax debt under section 7122 (the “**Rescission Rule**”). IR 2020-59 addresses the failure to file 2018 and 2019 tax returns, but does not address the failure to timely make payments with respect to these (or other) tax returns. We recommend that the Service exempt taxpayers affected by the COVID-19 emergency from the Rescission Rule to the extent the noncompliance arises from COVID-19-related medical or financial issues. To lessen the administrative burden associated with evaluating the reasons for noncompliance, we recommend that the Service allow taxpayers to self-certify the reasons for the noncompliance, while reserving the ability to audit taxpayers with respect to the self-certification. We note that this is a similar approach used to allowing taxpayers to self-certify with respect to missed 60-day rollovers for retirement accounts.¹¹

¹¹ See *Retirement Plans FAQs relating to Waivers of the 60-Day Rollover Requirement*, <https://www.irs.gov/retirement-plans/retirement-plans-faqs-relating-to-waivers-of-the-60-day-rollover-requirement> (last updated Jan. 30, 2020).

2. Forego Recoupment of Refunds for Pending or Accepted Offers in Compromise

For a pending or recently accepted offer in compromise, the Service and the taxpayer typically agree that the Service is entitled to offset any federal tax refund for the year during which the OIC is pending or accepted. To assist taxpayers undergoing financial hardship, we recommend that the Service forego recoupment of refunds for pending or accepted offers in compromise during the Suspension Period.

H. Forego Offsets

Due to the economic hardship facing taxpayers as a result of the COVID-19 emergency, and except for child support payments, the Service should refrain from offsetting refunds owed for the 2019 tax year.

I. Clarify Whether Partial Suspension on Collection and Enforcement Applies to “High Income” Taxpayers

IR 2020-59 states that “field revenue officers will continue to pursue high-income non-filers.” Some practitioners have interpreted IR 2020-59 as establishing a general suspension on collection and enforcement for all taxpayers, regardless of income. Other practitioners and, more importantly, some revenue agents and revenue officers have interpreted IR 2020-59 as creating an exception for “high income” taxpayers pursuant to which those “high income” taxpayers are not entitled to the benefits of a general suspension on collection and enforcement.¹² We request guidance with respect to whether the People First Initiative also applies to “high income” taxpayers.

Additionally, the Service has previously indicated that “high income non-filer taxpayers are those who *generally* received income in excess of \$100,000.”¹³ The People First Initiative does not define the term “high income non-filer.” It would be helpful for the Service to define the term “high income non-filer” so Service personnel and taxpayers understand to whom the general suspension on collection and enforcement applies.

J. Private Debt Collection

IR 2020-59 states that “[*n*]ew delinquent accounts will not be forwarded by the IRS to private collection agencies to work during this period” (emphasis added). For the reasons discussed above, we recommend the Service instruct private collection agencies (a) to suspend all private debt collection, not merely “new” delinquent accounts, or (b) alternatively, return from the private collection agency to the Service, pursuant to the Fair Debt Collection Practices Act, any account where the taxpayer has been affected by COVID-19 if the Service determines

¹² See, e.g., Memorandum concerning Temporary Relief for Taxpayers – Suspension of Certain Collection Activities During the COVID-19 Pandemic (Mar. 30, 2020) (“IRS will continue to assign [high-income nonfiler] cases and employees will continue to work them”).

¹³ *IRS increases visits to high-income taxpayers who haven’t filed tax returns*, IR-2020-34, <https://www.irs.gov/newsroom/irs-increases-visits-to-high-income-taxpayers-who-havent-filed-tax-returns> (Feb. 19, 2020) (emphasis added).

that private collection agencies are not be prepared to respond adequately to the medical and financial issues affecting taxpayers impacted by the COVID-19 emergency.

II. Relief in Administrative CDP

IR 2020-59 states: “[a]lthough Appeals is not currently holding in-person conferences with taxpayers, conferences may be held over the telephone or by videoconference. Taxpayers are encouraged to promptly respond to any outstanding requests for information for all cases in ... Appeals.”

We understand and appreciate the Service’s decision, set forth in IR 2020-59, to suspend in-person meetings, but believe that taxpayers should be given the opportunity at one point for an in-person conference. For this reason, we recommend that the Service adjourn all CDP hearings, including any deadlines for responsive documents, until (a) the first business day following 30 days after the expiration of the Suspension Period (*i.e.*, until August 17, 2020), or (b) such other date and time as may be mutually agreeable to the taxpayer (and/or the taxpayer’s representative) and the Appeals officer.

Similarly, for these reasons, and for the reasons regarding the impact on the ability of taxpayers, their representatives, and Service employees to communicate effectively and efficiently in a timely manner, we recommend that Appeals defer the issuance of any collection-related notice of determination at least until after the expiration of the Suspension Period.

III. Relief in Collection Review Proceedings Before the Tax Court and with Respect to Notices of Appeal

A. Extend the Time to Petition Tax Court Until After the Expiration of the Suspension Period

For notices of determination issued by the Service or received by a taxpayer during the Suspension Period, we suggest that the Service extend the time within which to file a petition with the Tax Court until the later of (a) the first business day following 30 days after the expiration of the Suspension Period (*i.e.*, until August 17, 2020), or (b) 30 days after the date of the notice of determination.

B. Suspend All Motion Practice Against *Pro Se* Litigants Throughout the Suspension Period

Most collection review proceedings before the Tax Court are resolved through motion practice – typically, a motion for summary judgment or a motion for remand filed by the Commissioner.¹⁴ Motions filed in Tax Court, whether dispositive, substantive, or procedural, can be confusing to a *pro se* litigant. This confusion may very well be exacerbated for taxpayers who are navigating medical and/or financial issues attributable to the COVID-19 emergency. For this reason, we recommend that the Service refrain from filing any non-time-sensitive

¹⁴ See Carlton Smith, Posting of *Unpublished CDP Orders Dwarf Post-trial Bench Opinions in Uncounted Tax Court Rulings* to PROCEDURALLY TAXING blog (Jan. 29, 2015), <https://procedurallytaxing.com/unpublished-cdp-orders-dwarf-post-trial-bench-opinions-in-uncounted-tax-court-rulings/>.

motion in a collection review proceeding against an unrepresented litigant until the first business day after the expiration of the Suspension Period (*i.e.*, until July 16, 2020). To the extent there is a time-sensitive motion pending in any Tax Court proceeding against a *pro se* litigant, we recommend that the Service move for an extension of time to file that motion until 30 days after the expiration of the Suspension Period (*i.e.*, until August 17, 2020). Finally, in collection cases in which a taxpayer *is* represented by a lawyer or other authorized practitioner, we recommend that Counsel consent to all reasonable requests to extensions and enlargements of time for any document to be filed with the Tax Court.

C. Extend the Time to File a Notice of Appeal Until After the Expiration of the Suspension Period

For all cases originating in the Tax Court, we recommend that the Service extend the time within which to file a notice of appeal with the Tax Court until the later of (a) the first business day following 90 days after the expiration of the Suspension Period (*i.e.*, until October 14, 2020), or (b) 90 days after the date on which the decision is entered. The Service may postpone for a period of up to one year the time within which to file a notice of appeal for cases originating in the Tax Court pursuant to section 7508(a)(1)(C). That section, which is made applicable to a Presidentially declared disaster (like COVID-19) pursuant to section 7508A(a)(1), permits the Service to postpone for up to one year the time “for review of a decision rendered by the Tax Court.”

* * *