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MINORITY CHIEF COUNSEL

October 23, 2013

Mr. Daniel Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Mr. Werfel,

I am writing to request information related to the Internal Revenue Service (IRS) announcement yesterday that it will delay the start of the tax filing season until as late February 4, 2014.

The IRS announced that the delay was necessary to allow adequate time to program and test tax processing systems following the 16-day federal government closure. This rationale is preposterous. Last year, the President signed into law significant changes to the tax code governing individuals on January 2, 2013. Much to the credit of the IRS, the agency was able to adapt to these changes with just one week's delay and very few problems were reported over the course of the tax filing season. It strains credulity to believe that today, with absolutely no new changes to the tax law—13 weeks away from the originally scheduled date—the IRS cannot make-up twelve work-days. This determination raises serious questions about how the IRS actually allocated its resources during the shutdown.

On September 26, 2013, the IRS released its "Shutdown Contingency Plan" (Plan). The Plan detailed how IRS would operate during a lapse in annual appropriations in accordance with the Anti-Deficiency Act (Act), which generally prohibits agencies from obligating funds and employing personnel during a government shutdown *except to*

protect life or property, this includes “tax revenues”.¹ Under the Plan, IRS would furlough approximately 90 percent of its 94,516 employees, deeming 8,752 as essential employees. Under the Plan, everything done by the remaining 10 percent must advance the agency’s core mission.

However, according to the IRS’s press release, interruptions in “programming, testing and deployment of...IRS systems... needed to handle processing of nearly 150 million tax returns,” necessitate the delay. Yet, not all information technology (IT) professionals were interrupted from their work due to the shutdown. According to the IRS’s own Plan:

- 77 IT professionals were deemed essential so that they could continue their work on the insurance exchanges created by the Affordable Care Act (ObamaCare). As described in your Plan, these exchanges would “go-live” on October 1, and “key IT specialists” were needed to “triage any issues that arise during the first few weeks of deployment” and to operate a “control” room 24 hours a day, 7 days a week during this time,” and
- Four (non-IT) Affordable Care Act Office employees were also deemed “excepted.”

It is widely known that ObamaCare implementation is a presidential priority, however, for the IRS to determine that the implementation of this policy should take precedence over the preparation for the annual filing season seems to be contrary to the agency’s stated shutdown policy. It appears the IRS chose to ignore its responsibility to be prepared to process nearly 150 million returns and to delay the tax refunds of potentially millions of Americans.

To better understand the decision making that led to the delay of the 2014 filing season, please provide the following to the Committee no later than November 6, 2013:

1. Is it your position that IRS officials working on ACA implementation are essential for the protection of “life or property?”
2. Notwithstanding the Plan, which deemed 81 IRS employees as essential for ObamaCare implementation, how many IRS employees worked in this capacity during the shutdown, and for how many hours?
3. What system changes, updates or testing is necessary to open the start of the filing season given that no substantive changes have been made to tax law over the last year?
4. Specifically, what additional changes or testing does the IRS need to complete prior to the opening of the filing season that are directly related to the implementation of ObamaCare?
5. How many IRS staff would have been required to have been deemed essential in

¹ 31 U.S.C. § 1341 and 1342 (emphasis added); see also Memorandum for Heads of Executive Departments and Agencies, Agency Operations in the Absence of Appropriations, Office of Management and Budget (Nov. 17, 1981); Memorandum for the Assistant Secretary (Administration), Operating During a Hiatus in Appropriations, General Counsel of the Treasury (Sept. 2, 1982).

- order to ensure that tax filing season could open on time?
6. According to the IRS's announcement, "nearly 150 million," filers will face delays. To date, how many applications for ObamaCare has the IRS been directly involved in processing?
 7. Did the IRS consult with the Treasury Department or White House in the creation of the Plan or regarding its operation during the shutdown? and
 8. Provide all communication between IRS and the U.S. Department of the Treasury and/or White House regarding the Plan and/or ObamaCare implementation during the shutdown.

Thank you in advance for your assistance in this matter. If you have any questions, please contact Ways and Means Committee staff at (202) 225-3625.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Camp", written in a cursive style.

DAVE CAMP
Chairman