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April 5, 2021

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The Honorable Janet L. Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury, [janet.yellen@treasury.gov](mailto:janet.yellen@treasury.gov)

The Honorable Charles P. Rettig  
Commissioner of Internal Revenue  
Internal Revenue Service, [charles.rettig@irs.gov](mailto:charles.rettig@irs.gov), [IRS.Commissioner@IRS.gov](mailto:IRS.Commissioner@IRS.gov)

RE: Request For Further Postponement Relief for Tax Return Filings, Tax Payments, and Certain Other Matters Due to the COVID-19 Emergency

Dear Secretary Yellen and Commissioner Rettig,

The American College of Trust and Estate Counsel ("ACTEC") is pleased to submit the enclosed memorandum setting forth its request for further postponement relief for tax return filings, tax payments, and certain other matters due to the COVID-19 emergency. ACTEC commends Treasury and the IRS for their efforts, including through the issuance of Notice 2021-21, which postponed to May 17, 2021 the due date for filing individual income tax returns due on April 15, 2021 and for making certain 2020 income tax payments due on April 15, 2021. This postponement relief will help to promote the health and safety of the American people while alleviating some of their immediate financial burdens and income tax reporting obligations. However, ACTEC respectfully requests that the Treasury and the IRS consider providing similar postponement relief for certain other types of tax returns and tax payment obligations as well during these times of continuing national emergency.

ACTEC is a professional organization of approximately 2,500 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of federal taxes, with a focus on estate, gift and GST tax planning, fiduciary income tax planning, and compliance. ACTEC offers technical comments about the law and its effective administration, but does not take positions on matters of policy or political objectives.

If you or your staff would like to discuss the comments, please contact Kevin Matz, who led the task force that put together this memorandum, at (914) 380-2140 or [kmatz@stroock.com](mailto:kmatz@stroock.com), Don Kozusko, Chair of the ACTEC Washington Affairs Committee, at (202) 457-7211 or [dkozusko@kozlaw.com](mailto:dkozusko@kozlaw.com), or Deborah McKinnon, ACTEC Executive Director, at (202) 684-8460 or [domckinnon@actec.org](mailto:domckinnon@actec.org).

Respectfully submitted,



Ann B. Burns, President  
Attachment

cc: Catherine V. Hughes, U.S. Department of the Treasury, [catherine.hughes@treasury.gov](mailto:catherine.hughes@treasury.gov)

**Request of The American College of Trust and Estate Counsel (“ACTEC”)  
for Further Postponement Relief for Tax Return Filings, Tax Payments,  
and Certain Other Matters Due to the COVID-19 Emergency**

In response to the COVID-19 emergency, on March 29, 2021 the Treasury Department (“Treasury”) and the IRS issued Notice 2021-21 (the “Notice”).<sup>1</sup> The Notice postponed to May 17, 2021 the due date for filing individual income tax returns due on April 15, 2021 and for making certain 2020 income tax payments due on April 15, 2021 and provided certain other relief. ACTEC commends Treasury and the IRS for their efforts to swiftly provide this relief. The relief will help to promote the health and safety of the American people while alleviating some of their immediate financial burdens and income tax reporting obligations.

We respectfully request that the Treasury and the IRS consider providing similar relief for certain other types of tax returns and tax payment obligations. Taxpayers, for example, with federal gift tax payment and filing requirements have likely been affected by the emergency to the same extent as those with income tax payment and filing obligations. The same can be said for certain other categories of taxpayers, such as trusts and estates that are on a calendar year.

Broader relief is appropriate in order to help protect taxpayers from further severe economic hardship as a result of the COVID-19 emergency. Furthermore, unlike personal income tax returns, many other tax and information returns cannot be filed electronically. By granting broader relief, exposure to serious health risks will be reduced for (i) taxpayers, who need to leave the safety of their homes to arrange for the necessary payments and the mailing of those returns and payments, (ii) professional advisors, who need to meet in person to assist in the completion of the returns or travel and engage in activity, often in close proximity to other individuals, to complete appraisals of property included on gift tax returns, and (iii) other individuals who are needed to facilitate the filing of the returns or mailing of payments, such as mail carriers, financial institution employees, appraisers, and duplication service employees.

**Requested Extension of Postponement Relief**

The following is a list of additional 2020 tax return filing obligations, tax payment obligations, and certain other matters for which we respectfully request postponement relief.

1. Filing Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and payment of federal gift and generation-skipping transfer tax.
  - Treasury specifically provided such relief last year in Notice 2020-20.<sup>2</sup> Notice 2020-20 provided that “[f]or an Affected Taxpayer, the due date for filing Forms 709 (United States Gift and Generation-Skipping Transfer Tax Return) and making payments of Federal gift and generation-skipping transfer tax due April 15, 2020, is automatically postponed to July 15, 2020.”
  - Section 6075(b)(2)<sup>3</sup> provides that an extension of time to file an individual income tax return also extends the time to file a gift tax return. The absence of

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<sup>1</sup> Notice 2021-21 can be found at the following link: <https://www.irs.gov/pub/irs-drop/n-21-21.pdf>

<sup>2</sup> Notice 2020-20 can be found at the following link: <https://www.irs.gov/pub/irs-drop/n-20-20.pdf>

<sup>3</sup> Unless otherwise stated, references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended.

clear guidance from Treasury to date for 2020 Forms 709, and with respect to the payment of federal gift and generation-skipping transfer tax, has produced unnecessary uncertainty. In the absence of an express extension of time to file the Form 709, many tax professionals are taking the position that Form 709 will need to be separately extended by the filing of Form 8892. That would appear to impose significant unnecessary burdens on both tax return preparers and the IRS. If the IRS takes the position that Section 6075(b)(2) does not apply to the extension granted in Notice 2021-21, this position should be announced publicly so that taxpayers are alerted to the need to file Form 8892 to receive additional time to file Form 709.

2. Filing federal income tax returns and making tax payments for other categories of taxpayers that also have 2020 tax returns due on April 15, 2021, such as trusts and estates that are on a calendar year.

- It would appear that the policy grounds for providing to individuals this one-month extension to May 17, 2021 should apply with equal force to certain other categories of taxpayers with 2020 tax return due dates of April 15, 2021, such as trusts and estates that are on a calendar year (in their case, on Form 1041). (Please see Notice 2020-23<sup>4</sup> for last year's corresponding grant of relief for this item.)

3. Filing Form 8855, Election to Treat a Qualified Revocable Trust as Part of an Estate.

#### **Additional Clarifications**

The following additional issues may need clarification. We request that Treasury and the IRS address these items as soon as practicable.

1. It is unclear if the duration of a taxpayer's later filed extension of time to file will be valid for six months from the original due date (*i.e.*, October 15, 2021 for a calendar year taxpayer) or six months from the new deadline provided under Notice 2021-21 (*i.e.*, November 15, 2021 for a calendar year taxpayer). If Notice 2021-21 provides for May 17, 2021 to be the starting date in calculating the date of any subsequently requested extension, clarification will also be needed to confirm that an extension of time to file a tax return that has already been filed with the IRS will likewise be deemed to have the effect of extending the extended due date for such return by six months from the new filing date (*e.g.*, from May 17, 2021 instead of from April 15, 2021).
2. It may be impractical or impossible for certain individuals to sign returns during this period of extended shelter in place orders across the country. Consideration by the IRS of permitted usage of verified electronic signatures (*e.g.*, DocuSign) would be an alternative method for execution of documents on a timely basis that would be consistent with the intended purpose of the relief granted.

We commend you for your efforts in all of the relief granted to date. We welcome the opportunity to provide further assistance to both Treasury and the IRS during these challenging times.

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<sup>4</sup> Notice 2020-23 can be found at the following link: <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>