

**Submitted via Electronic Delivery**

August 31, 2020

Mr. Stephen Tackney  
Deputy Associate Chief Counsel  
Tax Exempt and Government Entities [TE/GE]  
Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)  
Internal Revenue Service  
1111 Constitution Ave NW  
Washington, DC 20224

**RE: Contribution Due Date Under CARES ACT Section 3608**

Dear Mr. Tackney:

We appreciate the work that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have done to implement the pension and retirement provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Recently, Treasury/IRS issued Notice 2020-61, which addressed issues related to CARES Act Section 3608. This section provides that the due date for any minimum required contribution (as determined under Internal Revenue Code (IRC) section 430(a) and the Employee Retirement Income Security Act (ERISA) section 303(a)) that would otherwise be due under Code section 430(j) during 2020 is delayed until January 1, 2021.

Notice 2020-61 did not address that January 1, 2021 is a legal holiday. Instead, in all of the examples in the Notice, Treasury/IRS assumed that any delayed contributions made under CARES Act Section 3608 would be made on December 31, 2020.

This assumption is contrary to our belief that because January 1, 2021 is a legal holiday, any delayed contributions under CARES Act Section 3608 are due on January 4, 2021. Specifically, IRC Section 7503 provides that

When the last day prescribed under authority of the internal revenue laws for performing **any act** falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. (Emphasis added)

Under 26 C.F.R. Section 301.7503-1(b) the term “legal holiday” “includes the legal holidays in the District of Columbia as found in D.C. Code Ann. 28-2701.” January 1 is a legal holiday under the District of Columbia Code (and in every state and territory of the United States). As such, because the due date under CARES Act Section 3608 is a legal holiday, the due date for any contributions is the next day that is not a Saturday, Sunday or legal holiday, which is January 4, 2021. Consequently, we ask that Treasury/IRS issue guidance confirming that the due date for delayed contributions under CARES Act Section 3608 is January 4, 2021 in accordance with IRC Section 7503.

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As always, we appreciate your attention to this matter, and we look forward to discussing this with you.

Sincerely,

American Benefits Council

National Association of Manufacturers

The Committee on Investment of Employee Benefit Assets

The ERISA Industry Committee

U.S. Chamber of Commerce

cc: Ms. Linda Marshall and Mr. Tom Morgan, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), Internal Revenue Service