U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

B-332838

January 14, 2021

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Taxable Year of Income Inclusion Under an Accrual Method of Accounting and Advance Payments for Goods, Services, and Other Items*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled "Taxable Year of Income Inclusion Under an Accrual Method of Accounting and Advance Payments for Goods, Services, and Other Items" (RINs: 1545-BO68, 1545-BO78). We received the rule on January 4, 2021. It was published in the *Federal Register* as final regulations on January 6, 2021. 86 Fed. Reg. 810. The stated effective date of the rule is December 30, 2020.

According to IRS, the final rule relates to the timing of income inclusion under an accrual method of accounting, including the treatment of advance payments for goods, services, and certain other items. IRS stated the final rule reflects changes made by the law commonly known as the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017), and affects taxpayers that use an accrual method of accounting and have an applicable financial statement. IRS also stated the final rule affects taxpayer that use an accrual method of accounting and receive advance payments.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). IRS determined it had good cause because an earlier effective date will allow taxpayers to implement the final rule earlier to take advantage of certain provisions in the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), that were designed to enhance liquidity, such as the 5-year net operating loss carryback provisions.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie Mudd
Director, Legal Processing Division
Department of the Treasury

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
"TAXABLE YEAR OF INCOME INCLUSION UNDER AN
ACCRUAL METHOD OF ACCOUNTING AND ADVANCE PAYMENTS
FOR GOODS, SERVICES, AND OTHER ITEMS"
(RINs: 1545-BO68, 1545-BO78)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) stated the final rule provides certainty and consistency by providing definitions and clarifications regarding the terms and rules in the law commonly known as the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). In the absence of the guidance provided in this final rule, IRS stated the chance that different taxpayers might interpret the statute differently is exacerbated. Because the final rule clarifies the tax treatment of items of gross income for certain taxpayers, IRS also stated there is the possibility that business decisions may change as a result of the final rule. According to IRS, the final rule generally has the effect of delaying the timing of tax liability, thus reducing effective tax rates for affected taxpayers. IRS further stated this delay in the timing of tax liability, viewed in isolation, will also decrease federal tax revenue. IRS noted a decrease in federal tax revenue either increases the deficit or necessitates increases in other taxes or a reduction in spending.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

IRS certified the final rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

IRS determined the final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of the statutory threshold.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On September 9, 2019, IRS published a proposed rule. 84 Fed. Reg. 47191. IRS received 10 comments. In response to comments received, on August 5, 2020, IRS published a proposed rule. 85 Fed. Reg. 47508. IRS received comments on the proposed rule and responded to the comments in the final rule. IRS waived the required delay in the effective date of the final rule for good cause. IRS determined it had good cause because an earlier effective date will allow taxpayers to implement the final regulations earlier to take advantage of certain provisions in the

Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020) that were designed to enhance liquidity, such as the 5-year net operating loss carryback provisions.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

IRS determined the final rule does not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements related to tax compliance. IRS stated that for purposes of PRA, the reporting burden associated with the collections of information in this final rule will be reflected in the IRS Form 3115 PRA submissions (Office of Management and Budget (OMB) Control Numbers 1545-0074, 1545-0123, and 1545-2070), which will be revised as a result of the information collections in this final rule.

Statutory authorization for the rule

IRS promulgated the final rule pursuant to section 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated the final rule was declared economically significant and reviewed by OMB.

Executive Order No. 13132 (Federalism)

IRS determined the final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law.