

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

<b>CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; TEXAS ASSOCIATION OF BUSINESS,</b>	)	
	)	
<b>Plaintiffs-Appellees</b>	)	
	)	
<b>v.</b>	)	<b>No. 17-51063</b>
	)	
<b>INTERNAL REVENUE SERVICE; UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF INTERNAL REVENUE; STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF THE TREASURY,</b>	)	
	)	
<b>Defendants-Appellants</b>	)	

**APPELLANTS' MOTION FOR A STAY OF BRIEFING, OR IN THE ALTERNATIVE, FOR A LEVEL II SECOND EXTENSION OF TIME OF 45 DAYS WITHIN WHICH TO FILE THEIR OPENING BRIEF**

The appellants, through counsel, hereby move to stay the briefing schedule in the above-captioned case. In support of this motion, the appellants state as follows:

1. We respectfully request a stay of the briefing schedule due to imminent administrative action, described below, that will require the Government to reevaluate whether it should proceed with this appeal (assuming that it is authorized by the Solicitor General, which, as of the

date of this motion, has not yet occurred). A stay is warranted for the following reasons:

a. At issue in this appeal is an April 2016 temporary regulation, 26 C.F.R. § 1.7874-8T, issued by Treasury and the IRS, which became effective immediately without notice and comment. At the same time, consistent with standard practices, Treasury and the IRS issued the same regulation as a proposed regulation, subject to notice and comment. The district court held that the temporary regulation was invalid because it did not comply with the notice-and-comment requirements of the Administrative Procedure Act. The Government filed this protective appeal.

b. Having completed notice and comment, Treasury and the IRS plan to finalize the proposed regulation. That process is nearly complete. A draft of the final regulation has been prepared, and it has been submitted to the Office of Management and Budget for review. The final regulation would replace the temporary regulation that is at issue in this case, which will be removed.

c. Accordingly, we respectfully request that briefing of this case be stayed until a final regulation is published in the Federal Register, during which time the Government will evaluate whether it should proceed with this appeal or dismiss it.

2. In the alternative, we respectfully request, for the reasons stated above, a level II second extension of time of 45 days within which to file our opening brief in this appeal. (*See* Fifth Cir. R. 31.4.)

a. The appellants' opening brief is currently due, pursuant to a 30-day extension, on March 16, 2018. Granting the requested 45-day extension would mean that the appellants' opening brief would be due on April 30, 2018.

b. The requested extension is supported by "[m]ore than ordinary good cause." (Fifth Cir. R. 31.4.3.2.) As stated above, a final regulation is in the final stages of the rulemaking process. The regulation would replace the temporary regulation that is at issue in this case, requiring the Government to reevaluate its position in this case. This administrative action presents extraordinary circumstances that necessitate the requested extension.

3. Counsel for the appellants has contacted counsel for the appellees regarding this motion for a stay of briefing, or in the alternative, for a 45-day extension of time. *See* Fifth Cir. R. 27.4 & 31.4.1(b). Yaakov M. Roth, Esquire, one of counsel for the appellees, stated that appellees had not yet formulated a position regarding this motion, but that they would do so in due course after this motion is filed.

### **CONCLUSION**

For the reasons discussed above, the appellants request that this Court stay the briefing schedule in this case. In the alternative, the

appellants request a level II second extension of time of 45 days, to and including April 30, 2018, for filing an opening brief in this case.

Respectfully submitted,

RICHARD E. ZUCKERMAN

*Principal Deputy Assistant Attorney General*

TRAVIS A. GREAVES

*Deputy Assistant Attorney General*

/s/ Teresa E. McLaughlin

GILBERT S. ROTHENBERG

(202) 514-3361

TERESA E. McLAUGHLIN

(202) 514-4342

DEBORAH K. SNYDER

(202) 305-1680

*Attorneys*

*Tax Division*

*Department of Justice*

*Post Office Box 502*

*Washington, D.C. 20044*

*Of Counsel:*

RICHARD L. DURBIN, JR.

*United States Attorney*

March 9, 2018

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

<b>CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; TEXAS ASSOCIATION OF BUSINESS,</b>	)	
	)	
<b>Plaintiffs-Appellees</b>	)	
	)	
<b>v.</b>	)	<b>No. 17-51063</b>
	)	
<b>INTERNAL REVENUE SERVICE; UNITED STATES DEPARTMENT OF TREASURY; DAVID J. KAUTTER, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF INTERNAL REVENUE; STEVEN T. MNUCHIN, IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF THE TREASURY,</b>	)	
	)	
<b>Defendants-Appellants</b>	)	

**DECLARATION**

I, Teresa E. McLaughlin, of the Department of Justice, Washington, D.C., state as follows:

1. I am an attorney in the Tax Division, United States Department of Justice. In that capacity, I have been assigned as one of counsel for the appellants in the above-captioned case.

2. The facts stated in the foregoing motion are true and correct to the best of my knowledge.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,  
that the foregoing is true and correct. Executed on this 9th day of  
March, 2018, at Washington, D.C.

/s/ Teresa E. McLaughlin  
TERESA E. McLAUGHLIN

## CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

this document contains 883 words, **or**

this brief uses a monospaced typeface and contains \_\_\_\_\_ lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14, **or**

this brief has been prepared in a monospaced typeface using \_\_\_\_\_ with \_\_\_\_\_.

/s/ Teresa E. McLaughlin  
TERESA E. McLAUGHLIN  
Attorney for Appellants

March 9, 2018



## **CERTIFICATE OF SERVICE**

I hereby certify that, on March 9, 2018, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system. I further certify that all counsel of record are registered CM/ECF users who will be served by the court's CM/ECF system.

/s/ Teresa E. McLaughlin  
TERESA E. McLAUGHLIN